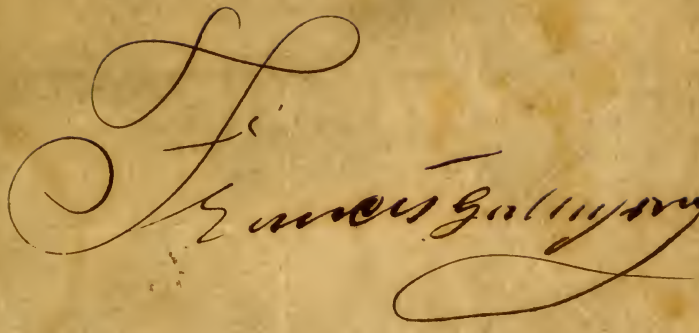

UNITED STATES CIRCUIT COURT.

A FULL REPORT

OF

THE GREAT GAINES CASE,

IN THE SUIT OF

MYRA GAINES vs. CHEW, RELF & OTHERS.

FOR THE RECOVERY OF THE PROPERTY OF THE LATE DANIEL CLARK, INVOLVING SEVERAL MILLIONS, IN WHICH THE LEGITIMACY OF THE PLAINTIFF, IS INVESTIGATED, AND HER ROMANTIC AND INTERESTING HISTORY DEVELOPED;

INCLUDING

THE DEPOSITIONS AND DOCUMENTS IN THE CASE,—THE SPEECHES OF THE LAWYERS, (EMBRACING SOME OF THE MOST EMINENT TALENT OF THE BAR OF LOUISIANA AND ALABAMA,) AND THE DECISION OF JUDGE McCALEB.

REPORTED BY

ALEXANDER WALKER.

NEW ORLEANS:
PRINTED AT THE OFFICE OF THE DAILY DELTA, 112 POYDRAS STREET.

1850.

INTRODUCTION.

The remark that "truth is stranger than fiction," was never more forcibly illustrated, than by the history of the suit brought by Mrs. Myra Gaines, to recover the property which belonged to Mr. Daniel Clark, who she alleges was her father. The wildest romance ever written, could not contain a greater variety of strange incidents, more affecting details, more strongly marked characters, a more constant succession of stirring events, and stronger exhibitions of folly, intrigue, deception and crime. These details, too, combine the qualities of the most thrilling romance, with the more substantial features of history, not only in its graver national and political aspect, but also in the more humble, but not less useful sphere of embodying the manners and habits, and social ideas and customs of the times. Herein will be found a large fund of information, relative to the acquisition of Louisiana by Mr. Jefferson, in 1803, in the inception and accomplishment of which Daniel Clark played a conspicuous part. In Clark's letters, and those addressed to him, are developed many little under currents and subordinate events, relating to the cession of Louisiana which have never appeared before. Passing from political to commercial affairs, the history of the most ambitious and enterprising merchants on this continent, such as Coxe and Clark were in their day, will be found full of valuable information to those who are curious in that department of knowledge. Not less interesting, and even more valuable, is the light which this record sheds upon the progress and changes in jurisprudence, through which this State has passed, since the events occurred, which have produced this litigation. The history of these parties, includes the most interesting epochs in the history of Louisiana. It commences with the old Spanish Government, when this colony was governed by that venerable compound of old Roman and Monastic, or Ecclesiastical law, from which the most enlightened features in the jurisprudence of all the present civilized nations of the world is derived. The marriage of Zulime Carriere to Jerome DeGrange occurred under that law,—so did the alleged marriage of Clark and Zulime, and their effects must, therefore, in a great measure, be controlled by the principles of the old Spanish law. The next era occurs after the cession in 1803, and includes the period of the Territorial Government of this colony, down to 1808, when the old code went into operation. That code was very materially changed by two events—first, the admission of Louisiana into the Union in 1812, and the consequent introduction of the chancery system of practice; and secondly, by the adoption of the code of 1825. To comprehend fully, therefore, the bearings of this case, it is necessary constantly to refer to these various systems of jurisprudence. This case, therefore, possesses deep interest in its jurisprudential aspects, and will be found to contain a great fund of valuable information, illustrative of the features of the different codes, which have controlled the rights and regulated the duties of the citizens of Louisiana, since its first settlement.

The characters of the individuals, who play the principal parts in this history, give also great variety and interest to the drama. The proud, ambitious, passionate, enterprising, yet affectionate, generous and kindly nature of Daniel Clark, who, amid all his trials and changes, never forgot the claims of his old mother and sisters, upon his duty and bounty, and seemed to be so deeply concerned to make edequate arrangements for the support and education of his children, whether born in matrimony or not,—qualities which bound his friends to him "as with hooks of steel,"—these were set off by vices and failings, which may be ascribed to the times in which he lived,—such as led him to betray the confidence of the poor French Syrup maker, by alienating from him the affections of his wife, and to desert the afflicted Zulime, in pursuit of the more glittering prize of the heiress of the House of Carrollton. As minor failings, we should not omit to notice the disposition manifested in the numerous letters on file to employ bribery, the influence of political position and intelligence procured by certain means, in advance of the rest of the world, to promote his commercial ventures. The other personages in the drama, also present very interesting features of character. The history of Zulime is full of romance. Her parents came from the land of poetry and romance,—the far famed home of the Troubadours—Provence. A native of Louisiana, she inherited the beauty for which the Creoles of this State are so celebrated, and at an early age, was followed by trains of admirers. Like many others, even of the damsels of our own Republic, she was captivated by a title, and before she was fifteen, married Jerome DeGrange, a Frenchman, whose want of personal charms, was amply atoned, for, by his claims to descent from one of the "first families" of France. The alliance however, seems to have been an unhappy one. Zulime was gay and beautiful. The aristocratic pretensions of Jerome soon collapsed. His fall was nearly as great as that of the Prince of Como's, he sunk from the lofty position of a branch of the "Ancien Regime" into a poor Syrup maker and confectioner. Zulime thus cruelly disappointed in her first matrimonial adventure, was not disposed to waste her charms in a convent, or to mourn in secret over her misfortunes. She was evidently possessed of strong domestic traits and qualities. Hence her alliance with Clark, which we shall not attempt to designate. Hence, too, when in 1808, she discovered that Clark had deserted her, to offer his homage to Miss Caton, she married Dr. Gardette, with whom she continued to live until the day of his death, respected by all the friends of the family. So much of Zulime, whose narrative of this interesting affair, will be found in the following record. We have then the various other subordinate characters in this drama, all of which present points and features of interest. The devotion of the two sisters of Zulime, Madames Despau and Caillavet, as well as the warm friendship of Clark's particular friends, Pitot, Bellechasse Bonfoistaine and De la Croix, form pleasant episodes in this narrative.

But what, after all, can equal the romance of the history of the lady complainant in this suit?—Born in secret, and removed from the care of her mother, she is brought up in ignorance of her parentage by a kind family. Never does the suspicion cross her mind that she is not the lawful child of her foster parents, until she attains full age and forms a matrimonial alliance. When the secret of her birth is betrayed to her, her whole nature is thoroughly aroused, and her mind excited to the vigorous prosecution of her rights. She commences then, with the ardent aid and guidance of her husband, the legal measures, to recover what she believed to be her rights. Her husband, an impulsive and determined young man, involved himself in serious difficulties in the prosecution of these legal proceedings. He was imprisoned for a libel of the defendants, the Executors of Clark's estate. His death, by yellow fever, soon after removed him from the scene of worldly contention. The widow, some years after the death of her first husband, married that pure minded and chivalrous-hearted old soldier, General Edmund Pendleton Gaines, the hero of Fort

Erie. It appears that one of the motives to this alliance was the deep interest, which General Gaines felt in the fortunes of his old friend, Daniel Clark, with whom he had been brought into contact in the early events of the history of Louisiana. In his marriage contract he bound himself to prosecute the rights of his wife to a final decision. Faithfully did he redeem his promise. He devoted the last ten years, at least that portion of them not demanded by his country, to the vigorous and untiring prosecution of this suit, yielding up his distinguished life whilst engaged in superintending the taking of the depositions in this case.

Nor would we discharge our duty, as faithful chroniclers of the facts in this case, if we neglected to notice the evidence which this record furnishes of the high esteem in which Clark held the principal defendants, Richard Relf and Beverly Chew. These gentlemen are now old and valued citizens of New Orleans. In the extreme of age, they have gathered around them a large circle of relatives and friends. In youth they seem to have been patient, persevering and honest merchants, and in old age they have retained the good opinion of the community in which they have resided for forty years. In saying thus much, we hazard no opinion of the justice of the imputations cast upon them in this case, but only refer to facts which neither party will gainsay.

This case, it is believed, is reported faithfully and impartially. The gentlemen on both sides have acknowledged the fairness of the report. It has been a severe labor, as it involved the necessity of looking through and condensing a record of fifteen hundred pages. It will be found to embrace all the substantial facts in the case,—all that were referred to in argument, and in the decision of Judge McCaleb. In giving the depositions, the language of the witnesses, is generally followed, excluding the interrogatories, cross interrogatories, and much legal surplusage and technicality. The voluminous letters on file, have been condensed, as many of them were only introduced to prove dates. The speeches of counsel are acknowledged to be remarkably full and accurate. They will be found interesting, as fair specimens of the forensic ability and talents of our principal lawyers. The whole report, however, has been got up hurriedly, amid the pressure of the unceasing duties of editing a daily paper. The Reporter must, therefore, beg the indulgence of the readers for any imperfections it may contain.

A. W.

IN THE UNITED STATES CIRCUIT COURT.

THE GREAT

GAINES CASE.

This long delayed and much contested case came up on Wednesday, January 23d, 1850, before the Circuit Court, Judges McKinley and McCaleb. Messrs. Grymes and P. C. Wright, of our Bar, and Colonel Campbell, of Mobile, appeared for the complainant. For the defendant, Greer B. Duncan, T. G. Morgan, and Miles Taylor.

After some discussion in regard to the printing of the record, the case was opened by Mr. P. C. Wright reading the first Bill in Chancery, which, together with the other pleadings, we have, at great labor, condensed, so as to present the points disentangled of legal technicalities and verbosity.

THE PLEADINGS.

The first Bill in Chancery was filed by Mrs. Whitney, on July 28, 1836, in the United States Circuit Court, before Judge Samuel K. Harper. This bill was prepared by James W. White, solicitor. The orator and oratrix are William Wallace Whitney and Myra Clark Whitney, his wife. The bill proceeds to enumerate certain properties of which Daniel Clark died possessed, to wit:

1. One plantation, five leagues from the city, on the left bank of the Mississippi, including all the buildings, etc.; purchased by Clark of Stephen Henderson, for $120,000.

2. A square in faubourg St. Mary, Second Municipality, bounded by Philippa, Poydras, Circus and Perdido streets, together with all tenements, etc. [This square is worth at least $50,000.]

3. A tract of land on Gentilly Road, 22 arpents front

4. Lots number 184 and 185 on Royal street, New Orleans.

5. Three lots, each 60 feet front by 120 deep, at the southern corner formed by the intersection of Toulouse and Burgundy streets.

6. A tract of 135 arpents on the Bayou St. John, adjoining the propeity of Evariste Blanc.

7. A lot in the Faubourg St. John, half a league from the city of New Orleans.

8. Eight lots, from No. 1 to No. 8 inclusive, in Suburb St. John.

9. A lot in Washington street, in Faubourg St. John.

10. A square in Faubourg St. John, 300 feet front on St. John street, 200 on Washington street.

11. A plantation on the right bank of Bayou Lafourche, opposite Donaldsonville, 11 arpents front on the Mississippi River and 29 on Bayou Lafourche. This plantation, the Bill avers, was bought by Wade Hampton for Daniel Clark, and after Clark's death conveyed to one of the defendants in this suit, Richard Relf, as executor of Clark, who subsequently sold to Barthelemy Lafore.

12. A tract purchased by Clark of Wm. Sampson, in June, 1812, situate in Ascension Parish, on left bank of Mississippi, 18½ arpents front on Mississippi, and 40 in depth.

13. A lot in Second Municipality of New Orleans, bounded by Delord street, Tivoli Place, St. Charles, St. Joseph and Camp, being lot at S. E. corner of said square, formed by intersection of Camp and Delord—60 feet front on Camp by 120 on Delord.

14. The undivided half of a tract of land at Manchac, on East bank of the Mississippi, sold by Daniel Clark to Celestine St. M——; said sale being rescinded by District Court of Third District of Louisiana.

15. A tract of land near Duval's Plain, two leagues from the town of Baton Rouge, bought by Clark from Charles Ferrin, containing 600 arpents.

16. A tract of 14,046 arpents on the river Comite, 9 miles from the Amite.

17. A tract of 1248 arpents in East Baton Rouge, 6¼ miles from the Mississippi, 10 miles from Baton Rouge.

18. A tract of 4304 arpents in Baton Rouge, 14 miles south of the line of demarcation.

19. A tract of 3864 arpents on West side of the Comite, 3½ miles above Redwood Creek.

20. A tract of 2400 arpents on Jones's Creek, in Baton Rouge.

21. A tract of 2000 arpents, 9½ miles from fort of Baton Rouge.

22. A tract of 21,000 on East side of the Comite, 8 miles from the Amite.

23. Undivided half of a tract in Parish St. John the Baptist, 12 leagues from New Orleans, on the Mississippi.

24. Undivided half of a plantation in St. John Baptist, 4½ arpents front on the Mississippi.

25. A tract on left bank of Bayou Lafourche, 6 arpents front on the Bayou.

26. A tract of 5470 arpents on the Comite, on the Eastern side of the Comite, 13⅜ miles from the old boundary line between the Spanish and American possessions.

The bill then enumerates the slaves of which Daniel Clark died possessed: they are two hundred and twenty-six in number. Then follows an enumeration of all his other property: cows, oxen, and other animals; furniture, flowers, etc., of the value of $4044; and farming implements, etc., of the value of $3084. Then comes the particular debts due to Clark, amounting to $28,000; and then his debts in general, amounting to $85,438; to which the petitioners also annex the claim filed by Chew and Relf, administrators, of the debts due and other property of Daniel Clark, of the value of $323,188.

The bill then avers that Daniel Clark intended to leave his property to Myra Clark Whitney, and did, on or about July, 1813, duly make his will, declaring Myra Clark Whitney his legitimate child, devising all his

property to her, naming as his Executors Col. Joseph Deville, Degoutin Bellehasse, James Pitot, Chevalier Dusuau De la Croix; said De la Croix to be tutor of the minor Myra. This will, it is further averred, contained several annuities to Mary Clark, Daniel Clark's mother; and to Caroline Degrange; and contained directions as to the education of Myra.

This will, it is alleged, was written by Daniel Clark, was read to Judge James Pitot, the late John Lynd, (Notary Public,) and Mrs. Harriet Smith, and its contents communicated to said Col. Bellehasse, to De la Croix, and Mr. P. B. Boisfontaine; that Daniel Clark died about the 16th August, 1813, without altering or revoking this will, leaving Myra, his only child or descendant, his fixed heir of all his property.

The bill then avers Myra Clark Whitney's right of inheritance as the only lawful and legitimate child of Daniel Clark. It further relates that shortly after her birth, which took place in July, 1806, Myra was placed by Daniel Clark in the family of Samuel B. Davis, with whom she lived in New Orleans till 1812, and then moved to Philadelphia. She continued with Davis during Clark's life and some time after his death. While he lived, Clark exercised over her the authority, care and protection of a parent.

In 1811, Clark, fearing that Daniel W. Coxe, of Philadelphia, had involved him, assigned property to S. B. Davis and others, to the amount of several hundred thousand dollars, to be held in trust for Myra, and made a brief and general will of all his property to his mother, appointing Richard Relf and Beverly Chew as his executors.

Daniel Clark returned from Philaeelphia, and finding his interests not seriously jeopardized by Coxe, received back a portion of the property assigned to Davis, and declared that he should revoke the will in favor of his mother, and make one, devising all his property to Myra Clark. That he revoked said will, and then made one in 1813, shortly before his death, leaving all his property, to his daughter Myra. In his last moments he declared that he had made this will and that it was contained in a certain drawer in his office. The will of 1811 continued in the possession of Relf and Chew. Relf was an agent of Clark, in his extensive affairs, and at and before the latter's death, assumed control over his domestic affairs, and took possession of his papers—and that said Relf obtained possession of the will of 1813, and destroyed it, and substituted the revoked will of 1811—had it probated, and himself and Beverly Chew appointed executors. The bill then avers that there being no relations of Daniel Clark in Louisiana, said Chew and Relf fraudulently took possession of Clark's effects, and administered the same, falsely representing the estate to be insolvent, and selling or appropriating the same to their own uses, etc.

Myra continued with Davis till 1832, being always called Myra Clark until Clark's death, when her name was changed to Myra Davis, and she was kept in ignorance of her parentage and her rights until her marriage with Whitney, when she was made acquainted with her history, and ever since has been engaged in the prosecution of her rights.

Mary Clark, Daniel's mother, being, dead, the other heirs of Daniel are Eleanor A. Beaone and Jane Green, daughters of Mary Clark—Jane Green and Sarah Campbell, grand-daughters of Mary Clark.

Then followes an enumeration of the owners of the property, which are as follows:

Tract 1. Widow Holliday and John Holliday.
2. Roman Marana, Jean Antoine, John Murtam, B. Berdoule, M. Marquez, J Mathew, Thomas D, Hailes, M. Calloway, J. Barobino, A. Peonice, New Orleans and Carrollton Railroad Company
Widow Jaubert, Charles Patterson, and Charles Tude,
3. F. Xavier Martin, (late Chief Justice,) and J Hopkins.
4. Rene Lemonier.
5. F. H. Petitpain and Toledano.
6. Mayor and Aldermen of New Orleans.
10. Augustus Pepie and —— Wright.
11. Gabriel Winter.
12. Phillip Miner, George Kenner, Duncan Kenner.
13. Lallande Ferriere.*

Then follows the names of François Dusuau de la Croix, as the possessor of 20 slaves, and Celestin Robert Avart, F. P. Labarre, Soniat Duponat, Louis Desdanes, H. Fortier, as the possessors of other slaves belonging to the estate of Clark. All these parties are made defendants, as possessors of property purchased at illegal and fraudulent sales.

The rest of the bill repeats the facts averred before, and that the defendants have been required to give up the property, but they refused; and further, that they (the defendants) aver that Daniel Clark was never married to Zulime Née Clark, mother of Myra Clark; but that said Zulime was the wife of Jerome De Grange, which is averred to be false, Daniel Clark and said Zulime Née Carriere having been lawfully married. It is further averred, that if Zulime was married to De Grange, the marriage was illegal, because said De Grange was the lawful wedded husband of another woman.

It is further alleged that the executors, Relf and Chew, did not act conformably to law in the administration of Clark's property, and various informalities are mentioned, which vitiate tho sales made by them. That the defendants were aware of these allegations, and cognizant of the frauds and other irregularities of Relf and Chew—that their suppression of the will of 1813 was well known throughout Louisiana.

The rest of the bill contains the usual clauses, and concludes by praying that Myra Clark Whitney be recognized as the legitimate child of Daniel Clark, and that all the enumerated property be adjudged to be hers in virtue of the heirship, both as legitimate child and as entitled under the will of 1813.

This is the substance of the original, the first bil filed by Mrs. Gaines, then Mrs. Whitney.

Then follows the demurrer of defendants, Relf and Chew, which denies that the bill contains sufficient grounds for a writ of discovery, that the will under which complainants claim has never been probated, that they have their remedy at law; that it is not alleged in the bill that Mary Clark, the heir-at-law of Daniel Clark, is dead; they also set up the probated will of 1811, as depriving this court of jurisdiction; that the effect of its judgment under the claim of the complainants would be, to set aside the proceedings of the Court of Probates of the Parish of Orleans, which could not be done.

This demurrer was signed by L. C. and G. B. Duncan, Isaac T. Preston, Lockett & Micou, L. Janin, and Thomas Slidell, attornies for various defendants

The Judges of the Circuit Court being divided in opinion, the case on the demurrer went up to the Supreme Court of the United States, when Judge McLean, at the January term in 1844, decided—1, That the complainants had the right to sue the defendants jointly in

—*Mr. Ferriere has since been dismissed from the suit.

the case, that the bill was not multifarious. 2, That the Court could not entertain jurisdiction of the case until the will set up was probated in the State Court. 3. That the case was a proper one for Chancery, and that it did not belong exclusively to a Court of law.

In July, 1844, Myra Clark Gaines, the complainant, having lost her first husband, and married General Edmond Pendleton Gaines, amended her bill conformably to the suggestions of the Supreme Court, complaining that Caroline Barnes claimed a large portion of the property of the late Daniel Clark, by virtue of the will of 1811. They further aver that the Probate Court refused to probate a will unless it could be produced in open court, and that if said Court had jurisdiction of such a will, the complainants despaired of success, by reason of the manifest prejudice of the judge of said court, and by reason of the direct interest of two of the judges of the Supreme Court, (Martin and Matthews) who had purchased at the sales of Clark's property under the will of 1811. They, therefore, discontinued their probate proceedings. They further allege that Mrs. Gaines is entitled to one moiety of Clark's estate by virtue of a conveyance from her mother, said estate having been acquired during the coverture of said Clark and wife. The claim of complainant is to the whole estate under the will of 1813—or that she is entitled to it as heir-at-law. If there be no will, she is entitled to one-half in right of her mother, and four-fifths as forced heir of her father.

To this bill Chew, Relf and Gerriere demur, on the same grounds as in the former demurer, alleging that the said bill disregards the decision of the Supreme Court, and on the additional grounds, that the matters set forth in the amended bill were not proper matters for amendment. Second, that M. Z. Gardette's (Mrs. G.'s mother) marriage with Clark, is not shown as to time or place, or that she is entitled to the benefit of the community. Finally, they set up the law of limitation or prescription.

Then follow the pleas of the defendants. They deny all the allegations in the bill, that Clark ever possessed the property enumerated—that he even married Z. N. Carriere—that Myra Clark Gaines was his daughter—that he ever made any other will but that of 1811—which said will was duly administered under the control and jurisdiction of the Probate Court of New Orleans. They declare that Z. N. Carrire, before the birth of Myra, was married to Jerome DeGrage, and said marriage had not been dissolved at Myra's birth.

After these pleas, come the answers of defendants. First, the answer of Chew and Relf. In their answer, they aver that Daniel Clark died in August, 1813—that he made his will, in due form of law, on 20th May, 1811; and said will was duly probated in 1813, and Relf and Chew qualified as executors. All the charges and allegations in plaintiff's bill, are expressly, and, in general terms, denied. Mary Clark is averred to have been the only proper heir to whom Relf and Chew could account; she was the universal heir, and she had given them the power of attorney to sell and administer the property devised to her by Clark. Their acts, as executors, were fully approved by Mary Clark, whilst she lived. She died in Philadelphia, in 1823, leaving a will, appointing Joseph Reed her executor. Reed continued Chew and Relf as the agents for the estate of Mrs. Clark, whose will was duly recorded here. The answer further avers that Daniel Clark, previous to the year 1801, had carried on business with Daniel W. Coxe, of Philadelphia, and said parties had accumulated large property in the name of Clark. On 19th June, 1813, Clark entered into partnership with the defendants. Chew and Relf, who had succeeded to the business of the old partnership of Clark & Coxe; and agreed to divide all his property equally with them, except his house on the Bayou Road, and the property inherited by him from Thomas Wilkins. Thus defendants became entitled to one-third of all Clark's property.

Most of the property was held in the name of Clark, whose debts were enormous. Respondents were kept much embarrassed by the large quantity of unproductive lands owned by them in connection with Clark. In consequence of these embarrassments, they applied for a respite from their creditors, as well for the benefit of Clark's estate as for themselves. This was in 1814. The meeting of creditors granted the respite, and they proceeded to dispose of the property, most of which was held in Clark's name. Said sales were made to the best advantage. The whole statement of complainant, about the will of 1813, and its destruction by Relf, is pronounced by the latter unfounded and false, under the sanction of an oath. The only will of Clark was that of 1811, and the whole conduct of Relf and Chew, under that will, is averred to have been just and legal. It is then alleged that Clark could not have legally married Zelime Née Carriere, who intermarried, in December, 1794, with Jerome DeGrange, who was living when Myra was born; that these parties had not then been divorced; that said Zulime, after Myra's birth, to wit, in 1808, had sued DeGrange for allimony, representing herself as his wife; and in 1806, sued him for a divorce, which divorce was granted subsequent to the birth of Myra; and in 1808, said Mrs. DeGrange married James Gardette, with whom she lived till his death; that Daniel Clark lived five years after the marriage to Gardette, and never, in any way, acknowledged the lady as his wife; that if complainant was really the daughter of Daniel Clark, by Zulime Nee Carriere, she was illegitimate, and could not, therefore, inherit by will or otherwise. It is also averred that Madam Carriere was never introduced into the same society with Clark, and that at the time stated, Clark was paying his addresses to others. They repel the imputation upon his character involved in the charge of his connexion with Mad. Carriere. They deny that Myra was ever recognized as the legitimate child of Clark, but aver that in 1817, Colonel Davis, in whose family Myra was raised, brought suit against them, as Clark's Executors, for the support of Myra, styling her his natural or illigitimate child. She was also so recognized in the will of Mary Clark, the mother of Daniel. But respondents deny even this, that she is a child, legitimate or illegitimate, of Danial Clark. They aver that they have never interposed any delay to the settlement of this suit; in proof of which, they refer to the suit of Whitney and wife in 1834, which was quashed by the complainants themselves; to the suit against them for the trust funds alleged to have been appropriated to them, which was decided in their favor; to the suit brought by Relf against Whitney, former husband of complainant, for a libel, in charging him with destroying the will of Clark, which was decided in respondent's favor. They declare that Clark's property was sold on the most advantageous terms, and faithfully applied to the liquidation of his

debts which were very large—that to Daniel Coxe alone being $172,950. They aver that having homologated their accounts in the Probate Court of New Orleans, they cannot be called on to account to this Court. They plead these probate proceedings as *res judicata*, alleging that they were not *ex-parte*, but were contested by De la Croix, one of the alleged Executors of the will of 1813, and before Judge Pitot, Judge of the Probate Court, another of the Executors of this same pretended will.

In regard to the application of complaints, to probate the will, of 1813, in the Probate Court of New Orleans, respondents deny that the question of jurisdiction was raised, but aver that the case was nonsuited, expressly on the ground that the applicants failed to appear and present their claims. As to the alleged prejudice of the Judge of Probates, they aver that the charge is a slander placed upon the records of the court, against one of the Judges of the State of Louisiana. The averment of interest in Judges Martin and Matthews, is also met by an admission, as to the former, who was incompetent to act in the case of complainant, but is utterly denied as to Judge Matthews; and that even if it were true, there were three other Judges on the Supreme Bench, who could see that justice was done complainants. They aver that the intimation of the United States Supreme Court, that the Circuit Court could hold on to the jurisdiction of this Court, in order to oblige defendants to go into the Probate Court, was unnecessary, as the respondents have invited complainant to go into such court, and have offered to waive all pleas to the jurisdiction, in order to get a decision of this vexatious matter.

This is substantially the answer of Chew and Relf, sworn to and filed January, 1845.

The amended and supplemental bill of E. P. Gaines and Myra Clark, his wife, filed in 1858, contains all the substantial allegations of the original bill, but renounces all claims under the will of 1813 as universal legatee, and claims four-fifths of the property as forced heir. The will, however, is asked to be recognized as a proof of the legitimacy of Myra, and her rights to inherit four-fifths of Clark's effects. The amended bill concludes with certain interrogatories to defendants, as to the manner in which they acquired their property.

Then follows the answers of the defendants, which adopt the grounds set forth in the principal answer of Chew and Relf.

It is also alleged, in one of these answers, that if Daniel Clark ever was married, it was a fraud in the parties in concealing and keeping secret said marriage from all the world, and said secresy was violative of the laws of God and man.

After many tedious and complex interlocutory proceedings, plaintiffs filed a supplemental bill, in which they recite the facts of the case of Gaines *vs.* Patterson. The judgment in this case fully explains all its facts. It is as follows:

"This cause having come on for final hearing, by consent of the complainants, and the defendant Patterson, upon the bill, answer, replication, exhibits, depositions and documents on file herein, and on the admission of parties, that the estate in controversy in this case exceeds in value the sum of two thousand dollars, and the said complainants and the defendant Patterson, expressly waiving and dispensing with the necessity of any other parties to the hearing or decision of this cause than themselves, and agreeing that the cause shall be determined alone upon its merits, and the Court being now sufficiently advised of and concerning the premises, does finally decree and order, that the defendant Patterson do, on or before the first day of the next term of this Court, convey and surrender possession to the complainant, Myra Clark Gaines, all those lots or parcels of land, laying and being in the city of New Orleans, and particularly described in his answer and exhibits, and to which he claims title under the said will of (1811) eighteen hundred and eleven; said conveyance shall contain stipulations of warranty against himself only, and those claiming under him. It is further ordered and decreed, that the defendants pay the complainants so much of their costs expended herein as have been incurred by reason of his being made a defendant in this cause."

"From which decree the defendant prayed an appeal to the Supreme Court of the United State, which is granted,"

On the appeal from this judgment to the Supreme Court, that tribunal rendered the following decision:

"We shall direct the decree of the Court below to be reversed, and adjudge that a decree shall be made in the said Court, in this suit declaring that a lawful marriage was contracted in Philadelphia, Pennsylvania, between Daniel Clark and Zulime Carriere, and that Myra Clark, now Myra Gaines, is the lawful and only child of that marriage; that the said Myra is the forced heir of her father, and is entitled to four fifths of his estate, after the excessive donation in his will of 1811 is reduced to the disposable quantum which the father could legally give to others; that the property described in the answer of the defendant, Mr. Patterson, is a part of the estate of Daniel Clark at the time of his death; that it was illegally sold by those who had no right or authority to make a sale of it; that the titles given by them to the purchaser, and by the purchaser to the defendant, Mr. Patterson, including those given by the buyer from the first purchaser to Mr. Patterson, are null and void, and that the same is liable, as part of the estate of Daniel Clark, the legitimé of the forced heir, and that the defendant, Charles Patterson, shall surrender the same, as shall be directed among other things to be done in the premises, as will appear in the decree and mandate of this Court to the Circuit Court in Louisiana."

By virtue of this decision, complainant declares that she is recognized and decreed to be the legitimate child and forced heir of Daniel Clark, as against all the defendants holding the same relation to complainants as Charles Patterson.

Defendants respond to this new issue, that they are not bound by a judgment against Patterson in a trial in which they took no part, that the whole proceedings in the case of Patterson were false and fraudulent, intended as an imposition upon the court. That it was a decree in part consented to by said complainants and Charles Patterson, as will be evinced and proved in many ways, and among others, by the fact that said case was submitted to the court on one day, and that on the following morning a decree was brought into court in the hand-writing of the counsel of the complainants, viz.: R. H. Chinn, Esq., in which, as a part of the decree of the court, it was agreed between the complainants and said Patterson, that he, the said Patterson, should be left in possession of the property claimed from him by complainants, and should take an appeal from said decree, without any security whatever; that, in fact, the complainants have always hitherto allowed, and still do allow, the said Patterson to enjoy the said property as owner, and so little respect have said complainants to said decree, that they have again made said Patterson defendant to their amended bill, claiming the same parcel of ground in said decree referred to; all of which facts, and many other acts of fraud which this defendant claims the right to adduce on the trial of this case, he declares make the decree mentioned by said complainants as having been rendered against Charles Patterson, wholly null and void as to this defendant; which fraud this defendant now puts forth as ground of defence in the same manner as if he had set the same out more fully and particularly, by way of special plea, or otherwise; and he prays that this court may investigate this case upon its own merits, disregarding said decrees so rendered against Charles Patterson, first, as *res inter alias acta*, as to the defendant; and, secondly, because they are collusive and were fraudulently procured.

The foregoing pleadings are given in regular order, to present the case in a clear and methodical light. The replications of complainants were filed 5th March, 1849, when the case was then put at issue. Before the answers of defendants were read, a discussion arose, as to whether the parties should go to trial on the pleas or the answers.

Mr. Campbell submitted that the pleas were overruled by the answer, which was full.

Mr. Duncan read the rule of the Supreme Court, allowing the party to go to trial on the pleas.

Judge McKinley. As the pleas and answer seem to involve the same points, we will try the whole case together. Proceed with it.

After reading the pleadings, the testimony, which is very voluminous, was opened, and Mr. Wright commenced reading it, the exceptions to the testimony being reserved to be decided by the court before rendering judgment on the merits.

At three o'clock, Mr. Wright had finished but a small portion of the testimony, when the court adjourned till to-day.

TESTIMONY FOR COMPLAINANT—Second Day.

In condensing the testimony in this case, we only take that which refers to the main facts, not regarding that which is merely formal proofs—such as proof of signatures of witnesses, and other collateral matters. The evidence being very voluminous, we have been compelled greatly to abridge it, to prevent our report extending to too great a length. It will be found, however, to embrace the main substantial facts.

Thomas D. Harper's Testimony.

Thomas D. Harper, for complainant, says he is 26 years of age; is a merchant and resident of New Orleans; is son of the late Harriet Smith, formerly Mrs. Harper; knows from family report that Mrs. Smith was in New Orleans in 1805; knows Mrs. Gardette, the mother of Mrs. Gaines, and her son, Dr. Gardette.

James Gardette's.

Jas. Gardette, for complainant, knew Madam Louisa Bergnerol, who formerly resided in Opelousa, and that she had given testimony in this case. He (Gardette) was born in Philadelphia in 1809, and is the eldest of his mother's children; his parents were married in 1807 or 8, and had three children; they lived in Philadelphia until 1829, when they moved to Bordeaux, (France) where his father resided till his death, in 1831; his mother continued to reside there till 1835; she is the mother of the complainant, Mrs. Gaines.

Gallien Preval's.

Gallien Preval, for complainant—age 68 years; occupation, gentleman; has resided 30 years in New Orleans; knows the parties in this suit; knew Daniel Clark in his lifetime, and was called on at his death to affix the seals to his effects; he went to Clark's house on the Bayou Road, affixed the seals, made out the process verbal, looked in a certain trunk for his will, but did not find it. As he was about to leave, Richard Relf handed him a sealed package, stating that he thought it was Clark's will. He noted the fact, and delivered the package into the Court of Probates. He knew Clark, but not intimately; attended his parties; Clark was intimate with Judge Pitot; the Judge informed witness that Clark said his will was in a certain trunk, and his confidential servant, Lubin, had been directed to carry said trunk to the house of De la Croix; Clark had further told Pitot, that in said will he had appointed Pitot, De la Croix, and Bellechasse, as his executors; Judge Pitot is the same Judge who ordered the probate of the will of Daniel Clark (1811); he frequently attended Clark's *soirees*; never, on these occasions, met with a lady recognized as Mrs. Clark; Daniel Clark's reputation was that of an honorable, high-minded man; he never thought of inquiring whether Clark was married or not.

Peter K. Wagner's.

Peter K. Wagner, for complainant—Is 63 years old, has resided in New Orleans since March or April, 1812; knew the parties; was intimate with Clark; visited him frequently during his last illness; in the spring of 1813 went to see Clark, to collect a bill; he was an off-hand kind of man, and said, "Wagner, I have no change;" asked him for a draft on Chew and Relf; he replied, "that fellow, Chew, is such a damned rascal I don't speak to him." We, here in New Orleans, then, had plenty of paper money, but little gold and silver. Knows that Chew was in New Orleans in 1845, at the battle of New Orleans—saw him in the lines.

Harriet Smith's.

Mrs. Harriet Smith, for complainant—Knew Clark in 1804, until his death, in 1813; my husband was of the firm of Harper & Davis, who operated on Clark's basis; I nursed Myra Clark's daughter; she was brought to me whilst in the family of my husband's uncle, and having an infant of my own, I consented to nurse her; I was informed she was Mr. Clark's child; he told me so; he treated her as his daughter, exhibited every sign of paternal regard, called her his dear little daughter, Myra, lavished every care and extravagance upon her, and said that she should inherit his splendid fortune. Clark continued these attentions till 1812, when Myra went to Philadelphia with Colonel Davis. I always understood Clark designed to make Myra his sole heiress. When he fought a duel with Governor Claiborne, and when he went to Philadelphia, in 1811, to settle his affairs with Coxe, he stated that he had made ample provisions for Myra. After his return from Philadelphia, he stated that the will of 1811 was made with a view to his apprehended involvements, through his connexion with Coxe. In 1813, a few months before his death, Clark told me he ought no longer to defer securing his estate to Myra. About this time he told me that De la Croix, Judge Pitot, and Colonel Bellechasse, would be his Executors; that he was engaged in making his will, constituting Myra as his sole heiress, and acknowledging her as his legitimate daughter, and spoke of certain legacies to his mother and others. In his conversations, he spoke of the course of education to be pursued with Myra, expressed great faith in her, and satisfaction that De la Croix had consented to be her tutor. About four weeks before his death he brought his will to me, and said it was an acknowledgment of Myra's legitimacy; called it the charter of her rights, and desired me to read it. I read the will—it recognized Myra as his daughter, and left her all his estate, with several legacies to other persons. He called on me after this, spoke of the burden taken from his mind by his ample provisions for Myra, and his minute directions as to her education. After Clark's death, I learned that this will had been suppressed, and one dated in 1811 had been substituted for it. Clark was a man of powerful and acknowledged talents, towering

ambition, great pride and dignity of character, strong feeling and affections. The interest exhibited by him in his daughter could not fail to make a lasting impression on me. When he brought his will to me, in allusion to his remark that it was the charter of Myra's rights, I playfully suggested to have it dated on 4th July. The disappearance of the will of 1813 created great excitement among Clark's friends, and great indignation was expressed, when it was learned that De la Croix became friendly with Mr. Relf, and received from him a large number of Clark's slaves. Myra was born in 1806. I don't know whether Clark was married—I always believed he was married to Myra's mother. The separation between Clark and Myra's mother was caused whilst Clark was in Washington, delegate in Congress, and was produced by letters written to Clark by other persons. They quarelled and separated, and she left New Orleans. I communicated to Myra her true history shortly before her marriage with Mr. Whitney. Up to that time, she believed she was the daughter of Colonel Davis. The mother of Myra was Miss Carrière, whose former husband, DeGrange, I always understood, had been condemned for bigamy in marrying her. Myra continued in the family of Colonel Davis from infancy until her marriage with Whitney. Clark had no other child. Myra's mother had a daughter by DeGrange, older than Myra, called Caroline. I thought Myra's mother respectable from seeing her intimate with Mrs. Relf, first wife of Richard Relf, now Cashier of the State Bank. There were rumors of a private marriage between Clark and Myra's mother.

JOSEPH D. D. BELLECHASSE'S.

Joseph Deville Degoutin Bellechasse, for Plaintiff—I knew Daniel Clark, and enjoyed his friendship for many years. Clark told me that he had a daughter named Myra, frequently took me to see her, and manifested great affection to her. In 1811, Clark conveyed to me thirty lots, for the sole use and benefit of Myra. At the same time, Clark stated that he had made a provisional will, making Chew and Relf his executors, but that he had provided by confidential agreement for Myra. In 1813, Clark spoke of settling up his affairs, and making a will in favor of Myra, and requesting me to act as executor, in conjunction with De la Croix and Judge Pitot. At this time he spoke of Myra as his daughter in the most emphatic and impressive manner. He afterwards showed me his will, written in his own hand, and providing as before stated, that Myra should be his sole heiress. When he was quite ill I called to see Clark, was told by Relf that he was too ill to see me. Indignant at the attempt to prevent my seeing my old friend, I pressed forward into his room.

"How is it," exclaimed Clark, taking my hand with affectionate reprehension, "Bellechasse, that you have not been to see me before? I told Relf to send for you." I replied that I had received no such message; that I had been his physician before, and would have been most happy to attend him. He squeezed my hand. I retired, telling Relf I should call again to attend my old friend. Relf said that his doctor had required him to be quiet and undisturbed, that he was not very dangerous. I desired, that if he grew worse, to be sent for. The next day I came without any intimation, and found Clark dead. I went to Pitot's, found him indignant that Relf should have kept him in ignorance of Clark's illness, and that the will of 1813 could not be found where Clark had placed it—that of 1811 having been substituted for it.

In 1831, seeing a letter of Relf, which was published in the case of libel against R. R. Keene, in which Myra was declared to be the offspring of an adulterous bed, knowing it was a shocking calumny on the name and memory of my deceased friend, and a cruel and wicked one on the birth and name of his child, I wrote a letter stating that it was an untruth, and that DeGrange, the former husband of Myra's mother, had been condemned for bigamy. This letter was not published, which I regret, as I felt that justice had not been done the character of my departed friend, against whom, when alive, no one would have dared to utter such a calumny. Relf know to the contrary, and was the last man from whom it should have proceeded, as he owed every thing he was and had to the generosity of Daniel Clark. I think it my duty to declare what I know to be a fact, that DeGrange was condemned for bigamy in marrying Miss Carrière; this condemnation took place in New Orleans about the close of the Spanish domination.

My name is Joseph Deville Degoutin Bellechasse. I was born in Louisiana, in 1760. I continued in Louisiana under the American Government, held various civil and military posts, and removed to Cuba in 1814, and have ever since lived on my plantation, and am a Lieutenant Colonel in the Spanish service. My intimacy with Clark commenced about the end of the last century, and lasted till his death. We had relations of friendship and business. In 1803 I was induced by Clark, then U. S. Consul at New Orleans, to accept the offer of the French Colonial prefect, Lassal, to take command of the militia of Louisiana, when the country was surrendered by Spain to France. I was one of the intimate friends whom Clark, in 1806, assembled in his house, and informing them of the intentions of Colonel Burr, advised them to exert their influence to support the U. S. Government, to rally around the Governor, notwithstanding his incompetency, and also to prevent a meeting of the Legislature, in case Colonel Burr should gain possession of the city. I was a member of the State Convention of Louisiana that assembled in 1812, and framed the Constitution of that State. Clark was the head of the political party to which I belonged.

I do not know, but I believe Clark was married to Miss Carrière. His pride was probably the motive for the concealment of the marriage, for he was proud of his pedigree, which he carried back to the ancient kings of Ireland, and always cherished his coat of arms, though a Republican. I wrote to Myra in 1832 of her rights; she did not receive the letters; but I met her in Matanzas, and there developed her whole history. I subsequently wrote her fully on the subject. She has my permission to exhibit these letters. Clark had no other child but Myra. She lived with Colonel Davis, and in her infancy was called Myra Clark. The will of 1813 was fraudulently suppressed. Clark knew the law well. He submitted that will to Judge Pitot, who fully approved it. Clark, from his confidence in my honor, declined receiving a re-conveyance of the 50 lots he had assigned to me in trust for Myra. He made other assignments. His object was to place his property beyond the reach of Chew and Relf, doubting their integrity and good faith.

Clark was a patriot, and an enthusiastic lover of

liberty. He refused to become a Spanish citizen. After the United States acquired Natchez, he became a citizen of that republic, though continuing to reside in New Orleans. He took an active part in calling the attention of the United States Government to the importance of acquiring Louisiana, and constantly corresponded with the officers of Government. The United States owe the acquisition of Louisiana to Daniel Clark. His influence reconciled the people to the change of government, and gave them the most favorable impressions of the justice and wisdom of the United States. But, unfortunately, the American Governor was weak-minded, and his policy was not wise or conciliatory. Jealousies and ill-feelings were engendered, which Clark was active in subduing. A hostility arose between Governor Claiborne and Clark, who became the chiefs of two opposing parties, Edward Livingston was one of the large number who moved subject to Clark's orbit. After Clark's death, I left New Orleans. Relf wrote me at that time that my enemies had charged that I left to lead the British against New Orleans—a charge very absurd, as I left all my family and property behind. I then wrote to friends in New Orleans, directing them to place Myra in possession of the property assigned to me by Clark. Relf wrote me that Clark had another daughter, called Caroline, who was entitled to one-half of the property, and proposed that I should convey the property to him, that Clark was too good a man to provide for one of his children to the exclusion of the other.

PIERRE BARON BOISFONTAINE'S.

Pierre Baron Boisfontaine, for the Plaintiffs—Witness was long intimate with Daniel Clark. Mr. Clark left at his death, a daughter named Myra, whom he acknowledged as his own, before and after her birth, and as long as he lived. In my presence he spoke of the necessary preparation for her birth; in my presence asked my brother's wife to be present at her birth, and in my presence proposed to my sister and brother-in-law, Mr. S. B. Davis, that they should take care of her after her birth. After her birth he acknowledged her to me as his own, constantly, and at various places. He was very fond of her, and seemed to take pleasure in talking to me about her. When he communicated to me he was making his last will, he told me he should acknowledge her in it as his legitimate daughter. The day before he died, he spoke to me about her with great affection, and as being left his estate in his last will. The day he died he spoke of her with the interest of a dying parent, as heir of his estate in his last will. Was present at Clark's house fifteen days before his death; saw him hand a sealed packet to De la Croix, stating that it was his last will. Before this he had often told witness that he was making his will. He spoke of this at Judge Pitot's. The day before he died he told me that his will was in his office room, in a little black case. He mentioned his will the day he died. When he gave the sealed packet to De la Croix, he told the latter that he had made him tutor to his daughter, and asked if he would do for her all he (De la Croix) had promised—adding: "I have given her all my estate in my will; an annuity to my mother; and some legacies to friends. You, Pitot and Bellechasse are the Executors." He frequently stated to witness that in his will he had acknowledged Myra as his daughter, had made De la Croix his tutor, and directed how she should be educated.

About two hours before his death, Clark evinced strong feelings for Myra, and directed his servant Lubin, to take his will to De la Croix as soon as he died. About this time, shortly before Clark's death, witness saw Relf take a bundle of keys from Clark's armoir, one of which witness believes opened the little black case he had seen Clark open so often. Relf then went below, and Lukin says, went into Clark's office, and locked himself up in the office. Almost Clark's last words referred to his last will in favor of Myra. My statement of the last will of Clark was fully confirmed by Judge Pitot and John Lynd, who stated that they had read the will; it was in Clark's hand-writing, and its dispositions in her favor were as I have stated. Col. Bellechasse and the wife of William Harper told me also that they had read it, and substantiated Clark's statement to me of its contents.

My name is Pierre Baron Boisfontaine; my age about fifty. I live opposite New Orleans; I was eight years in the British army; I was several years agent for Mr. Clark's plantations; I live on my revenue, am in no way connected with the parties, and have no interest in this suit. I knew Daniel Clark nine or ten years. He was the father of Myra, she was born in my house, and was put by Clark, when a few days old, with my sister and brother-in-law, Samuel B. Davis. Clark respected our misfortunes, knowing that my family was once rich, and had lost all by the revolution in St. Domingo. I believe Clark was married to Zulime Carriere, who, it had been represented, had been married to Mr. De Grange, which marriage was void, on account of a previous and subsisting marriage of De Grange. When the time for making the marriage public arrived, certain interested parties caused a separation between Zulime and Clark. The former went to Philadelphia, where she was advised by a lawyer that the marriage was invalid, and she then married Mr. Gardette. Clark always spoke of Myra as his legitimate daughter. Clark was a fond parent; he supported the Harpers, and conferred great benefits on Davis, for their kindness to Myra. He spoke of the marriage of Zulime to Gardette, as an unfortunate barrier to the publicity of her marriage with him, Clark. In his last moments, he showed great sensibility as to Myra being declared legitimate. I was a confidential friend of Clark's.

MRS. R. M. DAVIS.

Maria Rose Davis, for complainant—I knew Daniel Clark, being only intimate with him so far as he was in the habit of coming very often to my house to caress his daughter who was placed, in my charge. When Clark died, Myra was with us. Clark uniformly acknowledged her as his daughter with pride and uncommon affection. Myra was placed in my charge when she was six or eight days old, and remained with us in New Orleans till 1812, when we left. When we were about to leave, Clark said Myra would be his heir, and spoke of her in terms of great affection, and "pecuniary ambition." After Clark's return to New Orleans from Philadelphia till he left in 1822, he frequently visited us, and always spoke of her with great affection. When I saw Clark, for the last time, just as we were about to leave, he gave directions that Myra should be educated so as to take a standing in society equal to the great estate she would inherit. I never saw any will of Clark, or heard him speak of any.

My name is Mary Ann Davis, wife of Samuel B. Davis; I reside in Philadelphia. I have no interest in this suit, and am not connected with the parties. Before the birth of this child, Clark came to our house and asked that we would prepare for her reception. Myra never had teachers before we left New Orleans; she was educated at my husband's expense. I don't know that she was ever christened. She remained with us until she was married. Clark purchased a servant for Myra, and gave her costly dresses and playthings. Myra was born in a house which my brother then held, not Clark's residence. I know no other daughter of Clark, ever ackdowledged to me.

THIRD DAY.

SAMUEL B. DAVIS'S (*Mrs. Gaines's foster-father*) TESTIMONY.

Samuel B. Davis, for plaintiff—I knew Daniel Clark intimately. He left a daughter named Myra, then living in my family, whom he often acknowledged as his daughter. He stated she was his child before she was born—always claimed and acknowledged her as such, and manifested great affection for her. Before her birth Clark requested me to make preparations for her reception. She remained in my family until she married Mr. Whitney. In Clark's papers he spoke of her as his child. In 1811, Clark requested me to go to his house, and there, in an excited manner, spoke of his difficulties, growing out of his connection with D. W. Coxe, of Philadelphia. He showed me a schedule of his property, showing a balance in his favor of about $500,000. Previous to this there had been a coolness between us. In one instance Clark, being about to leave Louisiana, placed $28,000 in my hands, to be secured, in case of any accident, for his daughter's benefit. Shortly before leaving New Orleans, Clark placed $12,360 in my hands, to invest for the benefit of Myra. I gave my note for this amount. After Clark's death, Chew and Relf brought suit and recovered against me in my absence. On the 27th May, 1811, Clark wrote me from Balize, directing me to deliver an inclosed package to General Hampton, and refers to certain notes which he expects General H., as a man of honor, to pay; and in case he does, directs me to dispose of the funds as previously instructed. His previous instructions were to place the money to the best advantage for his daughter Myra's interest. Just before his departure from Philadelphia, he wrote me, directing me, in case of any accident or misfortune, to open a letter addressed to him, and dispose of the contents as previously directed. The letter contains this clause: "To account in a satisfactory manner to the person committed to your honor will, I flatter myself, be done by you where she is able to manage her own affairs; until which, I commit her, under God, to your protection." The letter referred to, as well as that to General Hampton, were returned to Clark unopened, on his arrival here. Clark exhibited the warmest affection for Myra, and frequently said he intended to leave her all his property.

I never doubted his sincerity. I know nothing of Clark's will, being absent with the army in the North, at the time of his death. Clark had assigned his Bayou property to De la Croix and Bellechasse, in blind confidence to secure it for his daughter. He had previously done the same to me, before a coolness had arisen between us. I know nothing of the will—have received instructions from Clark in regard to Myra's education. His reference to her as his daughter and heir was an every day affair. She was always the subject of conversation when we met. His language was always the same, but expressed with more enthusiasm, as she became more interesting. I had not seen Clark for more than a year before his death. At his last interview with his child, it was impossible for any father to have manifested more solicitude and affection. It was then he gave me instructions about her education. I know nothing of any will of Clark. My residence is Philadelphia. I am not connected with plaintiff, and have no interest in the result of this suit. In the spring and summer of 1813, I was commanding officer at Lewistown, Delaware. My intimacy with Dan'l Clark originated in New Orleans. I commanded the ship Gen. Washington sixteen years, and came to New Orleans consigned to Clark, in 1799. Difficulties had then arisen between France and the United States. I had served in the French navy as *lieutenant de vaisseau*. I resigned my command, returned to the United States very poor; and this was my first command. Clark then occupied a very high and influential position in New Orleans, and was looked up to with great respect by all strangers. He treated me with great kindness; my intimacy with him continued until 1809 or 1810, when from some causes unknown to me, our confidence was suspended. I was not present when Myra was born; it occurred in 1804 or 1805. Clark never spoke to me of the expense of maintaining Myra. Our relations forbade such allusions. The child remained with me. Time rolled on and the child grew, and as she grew, she gained our affections. Nothing was ever said about her maintenance until we were about leaving for the North, when Clark placed the money in my hands, referred to before, to be invested for her benefit. I never said or wrote anything to Clark about any advances for his daughter. He would have attended to such request, if I had hinted it.

On one occasion Mr. Clark spoke to me of a child called Caroline, then living in New Jersey.

LOUISA BENGUEREL.

Louisa Bergnerol, for plaintiff—My age is 57; I reside in Opelousas; I have heard of the plaintiff in this suit; I know Zulime Née Carriere, mother of Myra; I knew her long ago; I have no personal knowledge of her marriage with Clark.

Mr. James DeGrange married Zulime Carriere, which proved a bigamy; his lawful wife, whom he had previously married, came to New Orleans; he was thrown into prison in New Orleans, in 1802 or 3, but escaped, and, I believe, never returned to Louisiana; DeGrange's other wife brought with her proofs of her marriage; the exposure of DeGrange's bigamy was notorious in New Orleans at the time; my husband and myself were intimate with DeGrange; we reproached him for his baseness; he excused himself that he had abandoned his other wife, and never intended to see her; DeGrange was about six feet (English), stout built, light complexion, blue eyes; I knew DeGrange's lawful wife, whom he had married previous to imposing himself on Zulime. I have no interest in the suit, or any connection with the parties.

MADAME SOPHIE DESPAU, *Sister of Zulime.*

Madame Sophie Despau, for plaintiff—I am 71 years old, and reside at Biloxi, Harrison county, Mississippi;

I know Myra Clark Gaines, was present at her birth; I resided in New Orleans from 1800 to 1807; I knew Clark since 1797, and continued to be acquainted with him until the interruption of friendly relations between him and my sister, Zulime Née de Carriere, in 1807. I know that Daniel Clark was married; he was married in Philadelphia, by a Catholic Priest, to my sister, Zulime Née de Carriere; I was present at this marriage; this was in 1803—it may have been in 1802; it was shortly, previous to Mr. Clark's going to Europe. There was but one child of this marriage—the present plaintiff. Zulime had previously married DeGrange, from whom she separated, on account of the charge of bigamy against DeGrange, which he admitted. These facts were known. Clark made proposals to marry her. But, before his marriage could be effected, it was necessary to prove the invalidity of the marriage with De Grange. My sister and myself went to New York, to procure proofs of DeGrange's previous marriage. Clark was to follow us. On our arrival in New York, we found that the registry of marriages had been destroyed. Clark arrived after us. In Philadelphia, we found a Mr. Gardette, who said he was present at De Grange's first marriage; that his wife had gone to France. Mr. Clark then stated to my sister, "You have no longer any reason to refuse being married to me; it will, however, be necessary to keep our marriage secret until I have obtained judicial proof of the nullity of your marriage with DeGrange." They were then married, Clark and Zulime. After this, we heard that DeGrange's wife had arrived in New Orleans. We proceeded to that city. DeGrange was prosecuted for bigamy, father Antoine taking part in the prosecution. He was convicted, thrown into prison, whence he escaped by the connivance of the Governor, and was taken down the river by Mr. Le Breton D'Orgenois, when he got into a vessel and fled the country. This happened just before the cession. Clark told us, that before their marriage could be promulgated, Zulime should bring an action against DeGrange. This was delayed by the change of government. But, at length, in 1806, Messrs. James Brown and E. Fromentin, as counsel for my sister, brought suit against DeGrange, in the City Court of New Orleans, alleging his bigamy. Judgment was rendered against him. Clark still kept the marriage a secret. In 1806, he was elected to the U. S. Senate. Whilst in Washington, we heard he was courting a Miss Caton. My sister was much distressed, and we went to Philadelphia to get proof of his marriage. We could not find the records, and were told that the priest who had performed the marriage ceremony had gone to Ireland. Mr. Coxe told us that Clark was engaged to Miss Caton. My sister said it could not be so. Coxe replied, that she could not prove her marriage with Clark if he contested it. A lawyer was sent by Coxe, who said that my sister could not prove her marriage, and read a letter in English from Clark to Coxe, stating that he was about to marry Miss Caton. The marriage of Zulime and Clark was private. Besides myself, there was present a Mr. Dossier, of New Orleans, an Irish gentleman (a friend of Mr. Clark) whose name I do not recollect. Clark said he had informed Col. Davis, Daniel A. Coxe, and Richard Relf of his marriage. It was known only to a few friends. I became acquainted with Jerome DeGrange in 1793, when he first came to New Orleans. He passed for a single man. Zulime had two children by DeGrange; a boy and a girl. The boy died. The girl lived; her name was Caroline, and she married one Barnes. She was born, in 1801, and died within the three years past. My sister, in 1808, married, in Philadelphia, Jas. Gardette. The house in which Clarke and Zulime were married was a private one, rented by Clarke. I don't remember the street. As near as I can remember, the marriage took place in 1802 or 1803. Clark was several weeks in Philadelphia before the marriage. He remained in Philadelphia but a short time after the marriage. Zulime was nineteen or twenty years of age when married to Clark. After the marriage, we resided together in the house provided for my sister by Clark. I was not acquainted with Clark's mother.

I do not know of Clark's introducing Zulime as his wife. Shortly after the marriage, Clark went to Europe; he returned to New Orleans in the summer; Clark furnished Zulime with a handsome house in New Orleans, in which she and I resided; Clark took tea with us almost every evening; the house was near the Bayou Road; I don't remember the name of the street; I was not in New Orleans at Clark's death, in 1813; previous to this, a rupture had taken place between Zulime and Clark; Zulime was never divorced from Clark; believing it impossible to establish her marriage with Clark, she married Gardette before Clark's death. She lived with Gardette till his death, in 1832 or '33, having two children by him.

Clark was a highly honorable man, quick to resent an insult. I have always believed his feelings to my sister were honorable, but he was kept from making the marriage public on account of the unfortunate state of affairs. He never intended to impose upon Zulime. He met her after her marriage with Gardette, so my sister told me, and regretted that the present barrier prevented his publicly acknowledging her as his wife, having been convinced that she had been calumniated in the matters which led to their separation.

The child was placed with Colonel Davis, and whilst in his charge, was frequently visited by Zulime. My sister kept the birth of Myra secret because Clark alone possessed the means of establishing her legitimacy. After marriage to Gardette, she requested of Col. Davis permission to take Myra home, but Col. D. objected, saying that she had been raised as his daughter, looked up to him as her parent, and was happy in her ignorance of the unfortunate circumstances of her birth. The mother of Myra now resides in New Orleans, and is supported by her son, Dr. James Gardette. Since 1806, she has resided in New Orleans, Philadelphia, and France.

ROSE CAILLAVET, *Sister of Zulime.*

Rose Caillavet, for Plaintiffs—I am in my eighty-third year, and reside at Biloxi. I have been personally acquainted with plaintiff, Myra, about fourteen years; my knowledge of her dates from her birth. I resided in New Orleans previous to 1800, and until I went to France, in 1807. I was well acquainted with Daniel Clark; my intimacy grew out of my sister's marriage, and continued whilst I resided in New Orleans. I was not present at the marriage, but knew, both from Mr. Clark and my sister, that they were married. I know that in 1802 or 1803, Clark proposed marriage with my sister. These proposals were discussed, and the preliminaries were arranged, by my husband in my presence. The difficulty was to get proof to invalidate my sister's previous marriage with

DeGrange. To get these proofs, Zulime and Madame Despau went to the North. While there, Zulime wrote me that she had married Clark. Myra was born of this marriage. She was placed with Mrs. Davis, and nursed by Mrs. Harper. She is now the wife of General Edmund Pendleton Gaines. Clark always kept this marriage secret. I have heard that he acknowledged it in a last will, which was suppressed. I became acquainted with Jerome DeGrange in 1795; he was then reported to be an unmarried man. Some years after his marriage with my sister, it was discovered that he had a wife living. He was prosecuted and found guilty of bigamy and thrown into prison, whence he escaped by the aid of the Spanish Governor and Mr. Le Breton D'Orgenois. This happened just before the transfer of Louisiana to the United States. This was the last heard of DeGrange. His lawful wife came to New Orleans and established her pretensions. My deposition, taken in 1835, under a commission from the Probate Court of New Orleans, before Judge Preval, in presence of L. C. Duncan and C. Roselius, is, as it has been translated to me from the English copy, garbled and mistranslated in material parts, particularly in the cross-examination. I never said that there had been no children from the marriage of Zulime and De Grange. (Other misstatements are also referred to in this deposition, which she says were never translated and read to her. She adds, that since this deposition was taken, she has learned that the counsel employed on behalf of complainants had abandoned the case and taken a fee on the other side.) Zulime had two children by DeGrange. She was nineteen or twenty years of age when she married Clark. When Zulime returned to New Orleans, she lived with Madame Despau and myself, where Clark frequently visited us. He did not keep house with Zulime on account of their marriage being kept secret. My sister married Dr. Gardette and lived with him in France until he died, having two children by him. My sister Zulime now resides in New Orleans with her son, Dr. Gardette.

RIGHT REV. PHILANDER CHASE. *Bishop of Illinois.*

Philander Chase, for complainant, says—I reside at Jubilee College, Peoria, Illinois; I am *pæces ex-officio* of said institution, and presiding bishop of the Protestant Episcopal Church in the United States; I am acquainted with Chew and Relf, and Mrs. Gaines. In autumn, 1805, I went from New York to New Orleans, and obtained the charter of Christ's Church in that city; my family followed me in the fall of 1806; the vessel with my furniture was shipwrecked on Cuba; in consequence of this misfortune, we accepted a tender of the hospitality of Andrew Burk, and lived with him in the Faubourg St. Mary; shortly afterwards I moved down the coast, about three miles from the city, and occupied one of two dwellings belonging to Mr. Jos. McNeil. Nearly opposite to me, and on the other side of the dividing fence, about thirty or forty feet off, lived Myra Clark, under the nursing care of Mrs. Samuel B. Davis. The Davis's were not affluent, and were reputed to be dependant on the liberality of Daniel Clark; Myra Clark was then a year and a half or two years old, as I should judge from seeing her brought out every day to receive her father's caresses; this I saw during a period of six months or more; I was acquainted, but not intimately, with Daniel Clark; we spoke as two gentlemen having no particular acquaintance; his character was good as far as I know; one failing was admitted on all hands, viz: that a weakness, (amiable as it was termed by some,) in confiding too much in those who would flatter him, but who, it was thought, served him with some sinister views. He was reported to be as wealthy a man as any in New Orleans; my acquaintance with him extended from 1806 to 1811. Daniel Clark was the reputed father of Myra. He openly acknowledged cherished and fondled her, and spoke of her as his heiress.

I was *somewhat*, but not *extensively* acquainted with Mr. Samuel B. Davis. His attempts at familiarity with me were unpleasant by reason, of his bad character. Andrew Burk, my senior warden, had told me while I lived in his house, that Mr. S. B. Davis, having been a privateer under French colors, had taken his (Mr. Burk's) vessel at sea, and he was sorry to see him appointed harbor-master of New Orleans. When Mr. Davis moved into the house adjoining to mine, I found his servant cutting up, on the opposite side of the levee, and disposing of a Kentucky flatboat belonging to me, which I had bought a few days before, for ten dollars, in New Orleans, and caused to be floated down the river for domestic purposes. I asked the servant by whose orders he was doing so. He answered, "by my master's orders," and added such language as to give me to understand that a quarrel was the object aimed at. In this I was determined to disappoint him, and suffering the pecuniary loss, gave up the matter. Remembering what good Mr. Burk had told me, I shrunk from the thought of contending with Mr. Samuel B. Davis, especially as he had gained the patronage of the rich Daniel Clark. Daniel Clark was intimate with Davis. The latter had two neices. I never heard it contradicted that Myra was the daughter of Clark. Before the death of Clark, Davis was considered a poor man; since, he has been accounted Rich.

On 1st Feb., 1819, being about to be consecrated Bishop of Ohio, I heard that I was charged by Colonel Samuel B. Davis, a rich man of Philadelphia, with having written him a letter threatening his life. The matter was investigated; Davis never could produce the letter; he acknowledged he could not do it, in my presence. Here the matter dropped. My brother, Dudley Chase, who had been a member of the United States Senate, when asked by me, why he voted for the appointment of Davis as Colonel of the regiment to be raised for the defence of the Chesapeake Bay, replied that he went with his party, and that Mr. Fromentin, the senator from Louisiana, voted against him, as a man of bad character. I heard in Philadelphia, that Davis had a daughter living with him, by the name of Myra Davis. This deception of the public being consistent with his character, created no surprise in my mind, should she prove to be the real Myra Clark, whom I had seen her father own and caress in 1807-8. This opinion of Davis's deception was confirmed some time after by the Rev. Dr. Edmund Barry, in New Jersey, who informed me that Myra had married a Mr. Whitney; and, discovering that she was the child of Daniel Clark, they had gone to New Orleans to establish their rights. I never thought Clark an impostor, nor that he was capable of any grossly improper conduct. I knew nothing of Clark being reported a married man. Messrs. Chew and Relf were gentlemen of good reputation and standing, when I lived in New Orleans. They were members of Christ Church, of which I was Rector.

[Annexed to Bishop Chase's deposition is a correspondence between him and Virgil Whitney, son of Mrs. Gaines, in relation to the knowledge he (Chase) possessed of Clark and Myra. The Bishop's reply embodies substantially the facts set forth in his deposition.]

SAMUEL B. DAVIS—*On cross-examination.*

Samuel B. Davis, whose testimony in chief has been previously given, was subsequently cross-examined by defendants, and deposed as follows: (We only give of this testimony what is not stated in his previous deposition.)

I began to remain permanently in New Orleans in 1803. I have been both sailor and soldier. Clark, with whom I was intimate, had the reputation of being a rich man. Clark left a child by Madame DeGrange; that child is now Mrs. Ed. Pend. Gaines; she was born at my brother-in-law's, Baron Boisfontaine. Clark was then absent in Mexico. I provided for the child. Clark always spoke of Myra as his daughter with great affection. Clark never spoke of anybody else as his heir but Myra. Clark, before he left New Orleans, in 1807, to see after his affairs in Philadelphia, conveyed a large property to me, for the benefit of Myra, and also left with me a trunk containing valuable documents, which I deposited in Bank. I first became acquainted with Clark in 1799. I was present when Laussat, the French Colonial Prefect, arrived in New Orleans. Clark was then in New Orleans. This was in 1804. I never heard Clark speak of Zulime as his wife. I had no conversation with Clark about his connection with Zulime. Clark had no woman in his house but a black servant during my acquaintance with him. Myra was born in a house on Esplanade street. Clark never referred to her as illegitimate. The petition in the suit brought by me, in 1817, against Relf and Chew, may contain the allegation quoted, to wit: "the natural daughter of Daniel Clark, late of the city of New Orleans, acknowledged by him as such;" but these words were not used with my knowledge or consent. This suit was discontinued, on the promise of Relf and Chew to do what was right. Myra's nurse was the wife of a watchmaker, named Gordon. She remained with her only twelve days, and being neglected, I took her to my home, where she was suckled by Mrs. Harper, then nursing her oldest child. Mrs. De Grange often came to see Myra. When we went to Philadelphia, in 1812, Mrs. DeGrange was then living with Dr. Gardette, in Philadelphia. She was not prohibited from visiting my house. She was at my house. She never saw Myra elsewhere. Mrs. Gardette once met me in the street with Myra, and she stopped to speak to me. She did not speak to Myra, or take any such notice of her that the latter might remark; but she looked very hard at her. She acknowledged Myra to be her daughter, by Clark, and manifested every feeling which a mother could do towards a child. Myra bore a strong resemblance to Clark—more in figure than in face, and more in character than in figure. Clark visited my family every day. Myra never knew that Clark was her father; at that time she called him "Mr. Clark." She always called us by parental titles. Clark requested, when we left for Philadelphia, that she should not be placed in a boarding-school, but kept under the eye of my wife. I returned to New Orleans shortly after the war; my family came in 1816. Myra remained in Philadelphia. It was reported that Clark's estate was insolvent. I should have prosecuted my claims, if I had thought anything could be made out of the estate. I never heard Clark was married. There was a report that he was engaged to Miss Caton. I do not think it likely that Clark would have two wives. Myra could not have been born before 1804, as Mrs. Harper was not in New Orleans until that year. When Clark went to Congress, he took my son, Horatio Davis, to college with him. I think it was in 1805—the first time a delegate was sent to Congress, from Louisiana. At that time Myra was about a year old, and could not sit up; she was a sickly child.

TESTIMONY AS TO DEGRANGE'S MARRIAGE WITH BARBARA M. ORCI—*Ellen Guinan.*

Ellen Guinan, for complainant—I have resided in New York since I was nine years old; when I first came to New York, the pastor of the Catholic Church in the city of New York was my uncle, William Vincent O'Brien; he was pastor for thirty years, and died in 1814; I have seen him write, and identify exhibit (A) as in his handwriting; I have heard of the person named in this certificate; I did not know Jacobus DeGrange and Barbara M. Orci, named in the certificate; I learned from Mr. Cruse, who married the sister of Sir John Johnstown, that the books of my uncle, which had been given over to Bishop Connelly, were destroyed by fire; this was thirteen years ago; I heard that the witnesses in this certificate belonged to the Spanish ambassador's suit; my uncle had authority to marry; his certificates were mostly in latin; the marriage certificate of DeGrange is in the usual form; I think I have heard my aunt, Louisa Jane O'Brien, speak of the marriage of such a person as DeGrange; she mentioned particularly the dress of the bride.

The certificate referred to as exhibit (A) is as follows:

Omnibus has literas inspecturis Salutem in DOMINO. Ego, infra scriptus, sacerdos Catholicus et Apostolicus, pastor ecclesiæ S. Petri Apostoli, huic presentibus, notum facio et attestor omnibus et singulis quorum interest, quod die sexta mensis Julii, A. D. 1790, in matrimonium conjunxeram Jacobum Degrange et Barbaram M. Orci. Testes presentes fuerunt. Joannes O'Connell, Carolus Benardi et Victoria Bernardi. In quorum fidem, has manu propria scripsi et subscripsi negatoq nemini. Datum Neo Eboraci, hac 11d die mensis Septembris, R. D. 1805.

GULIELMUS N. O'BRIEN,
Pastor Ecclesiæ S. Petri, ut supra.

JOHN POWER, *Vicar General of New York.*

John Power, for complainant: I reside at No. 15 Barclay street, New York; am Vicar General of the diocese of New York and Pastor of St. Peter's Church; I have been Pastor of St. Peter's 26 years; records of marriage are kept in St. Peter's; I do not know whether the record of marriages in 1800 exists; I have heard it was missing; I knew Wm. V. O'Brien by reputation; he died before I came to New York. There are records of baptisms solemnized by him in St. Peter's Church; I believe the certificate (that of De Grange's marriage to Mrs. Orci) to be in the handwriting of O'Brien; it is identically the same handwriting with the records of St. Peter's kept by O'Brien; the Rev. Mr. O'Brien kept his record in Latin; his signature was Gulielmus V. O'Brien; he had authority to solemnize marriage; the certificate shown to me of the marriage of DeGrange to Mrs. Barbara M. Orci, is in due form; I know nothing of the witnesses in this certificate.

CHARLES E. BENSON.

Charles E. Benson, for plaintiff—Is Clerk of St. Peter's

Church, New York, and has the custody of the records; there are no records existing previous to 1802; my only knowledge of Rev. Mr. O'Brien's handwriting is derived from examination of the records; the certificate shown to me is in the handwriting of O'Brien; the records contain baptismal certificates in 1788, 1789 and 1790—down to 1808; I have searched diligently for marriage records in 1802, and can find none; I have searched every where in vain; O'Brien had authority to marry; his certificates were in Latin; I know nothing of the witnesses mentioned in the certificate.

[Here follows a certificate of C. W. Drebshler, who, at the request of plaintiff, instituted a search for the papers referring to the bigamy of DeGrange, but was unable to find them, most of the old Spanish documents having been removed from New Orleans previous to the Cession. Governor Claiborne made several ineffectual efforts to get the papers back.]

In the archives of the old corporation, Mr. Drebshler found some of the files of the Moniteur de la Louisiane of 1804, but the file of 1803, vol. 3 was missing. He cut out of a printed publication an extract, which reads as follows:

"Zulime Carriere, at the early age of sixteen, married in New Orleans, in the year 1796, one Jerome DeGrange, a younger member of a noble French family. About the year 1800, Zulime was informed that Mr. DeGrange had a former wife then living. De Grange was charged by Zulime's family with his baseness, in thus marrying her while his first wife was living, and although he at first denied the charge, he subsequently admitted it. Zulime left him on the instant, and he fled the country. About 1803, DeGrange's first wife came to New Orleans, from France, and her husband happening to come to New Orleans at the same time, she prosecuted him for the offence of bigamy, and had him arrested, by the order of the Governor, and thrown into prison. De Grange effected his escape, and never afterwards returned."

Mr. Drebshler annexes three certificates, one of Antonio Argete Villalebos, Spanish Consul, one of Mr. W. C. C. Claiborne, son of Governor Claiborne, and one of Eugene La Sere, keeper of the archives of the old Corporation, confirming his statements about the disappearance of the Spanish records, and of the volumes of the *Moniteur de la Louisiane*, in 1803.

Fourth Day.

MRS. LEONIDE BLONDEAU.—*Evidence to the good character of Mesdames Despau and Gardette.*

Mrs. Leonide Blondeau, Doctor Byrenheidt, Mrs. Adeline C. Nixon, Mrs. Louise Reyeson and Monsieur Le Curé Geunard, all of Biloxi, prove the good character of Madame Sophia Veuve Despau; also, Mesdames Sylvan Cantrelle, Evanate Née Brunet, Azelia Foucher, Antonio Urabro, Maria C. L. Truffin, Antonio A. Mendoz, Rev. Manuel F. Garcia, Andres de Torres, Eliza L. Ruelle, J. B. Sarazin, Pedro de Torres, Felix Carrière, C. Debaillons, J. and M. C. Louaillier, and others.

Elizabeth Bragen deposed to the good character of Mrs. Gardette (Zulime) whilst residing in Philadelphia.

One of the cross-interrogatories to the witnesses, introduced to prove the good character of Madame Despau, is as follows:

"Will you state what would be your opinion and the opinion of the first society, where you or she resided, concerning the chastity, truth and veracity of a woman, accused and charged by her husband in almost the following words: 'With scandalously and clandestinety leaving the territory, (her residence) leaving her children to the care of nobody, leading a wandering and rambling life without regard to the principles of honor and decency, being in open adultery.' Upon which accusation and charge the court rendered judgment, declaring 'that the wife had forfeited her rights to the property acquired, and that the same vested in and belonged to the husband.'"

To which the witnesses all replied that they knew nothing of the matter inquired about. Several of them state that M. Despau was a bad man.

L. Bringier—Visited Madame Gardette in Philadelphia. She kept a fine house and entertained the best company. It was I who brought presents to Clark from Mexico; they were gold medals from the Countess Perez Galvez, the Count de Cavarol, the Count de Valenciana. I was intimate with Clark; frequently took breakfast with him; never found a lady in his house. I knew Relf and Chew: they bore good characters. Relf was the Executor of Alexander Milne. I never heard any complaint against him.

Deserée Vignaud—I am sixty-six years of age, was born in Marseilles, France. I knew Madame Zulime DeGrange; have always been friendly with her; she visited in the best Creole society; I knew nothing against the reputation of Madame Despau.

M. S. Oalan—Has known Madame Despau thirteen years, and never knew any thing against her.

H. S. Harper—Inspector in the Custom House, knew Madame Despau when she lived with her son-in-law, near Matanzas. Her character was high there and here; she was esteemed among the elite in Cuba. I am the third child of Mrs. Harper, late Mrs. Smith, who suckled Mrs. Gaines, I do not know whether it was myself or brother who was nursed with Myra. My father was a coffee-planter in Cuba, and I lived with him till 1829, when I came to New Orleans.

Madame Alpuent—(Maiden name Elizabeth Chonnait.) Resides in Parish St. Bernard; is seventy-five years of age; knew the Carrières; their position in society was highly respectable; Zulime married De Grauge, a rich confectioner, who left in consequence of the arrival of another wife.

E. T. Brasier—Fifty years of age; resides in Philadelphia; knew the Gardettes; their position highly respectable; Dr. Gardette was an eminent physician, and was thought to be wealthy.

Mandate of the Supreme Court in Patterson's case.

In this mandate it is set forth by the Supreme Court, that Daniel Clark did marry Zulime Carrière, as set forth in the bill; that Myra is the only issue of this marriage, and was, at Clark's death, his only legitimate heir; that the lots of Patterson formed part of Clark's estate, were illegally sold by Chew and Relf, pretended executors, and must be restored to Mrs. Gaines. It is decided that Mrs. Gaines is entitled to her legitimate share, being four-fifths of Clark's estate. The Circuit Court is therefore directed to cause Mrs. Gaines to be put in possession of four-fifths of the property of said Patterson, and of the rents and profits accruing from said property since it came into possession of defendant.

Statement of Clark's property in 1810.

Debts	$330,873
Lots sold on the Bayou	117,640
	$448,513
Houmas land and 100 slaves	150,000
Sligo and 100 slaves	110,000
Half of Clarkaville and 30 slaves	25,000
Houmas Point	30,000
52,000 acres in Ouachita	52,000
40,000 acres in Filbeol's grant	40,000
8,000 in Opelousas	
180 acres on Canal Carondelet, extending to the Bayou Road, only valued at	20,000
Other lands, making a grand total, in debts and lands of	$967,013

Upon which only $5,500 was due.

This statement is signed by Daniel Clark.

On the 2d March, 1814, Relf and Chew, as executors, asked the Court for a respite, and a meeting of the creditors of Clark's estate to delay a sale and sacrifice of his property.

Letters from the Complainant.

No. 1—Letter from Mrs. Relf to Daniel Clark, dated Philadelphia, June 20, 1795, thanking him for his kindness to her son Richard,

No. 2.—A letter of introduction of Mr. Peahmal, of Manchester, to Chew and Relf.

No. 3.—From D. W. Coxe, Philadelphia, April 7, 1802, to Relf and Chew, advising them to ship cotton to Liverpool instead of New York; also in regard to frauds in packing cotton, and respecting other affairs of business

No. 4.—Daniel W. Coxe (June 11, 1802.) to Clark, informing him of the arrival of his father's family at the Lazaretto, and referring to other domestic arrangements; refers to the heavy debts he has to pay, and to various commercial transactions; advises him not to give over 16 cents for cotton, and concludes "that the probable fate of Louisiana is wrapped in mystery. The French article," he says, "looks very suspicious, and also Windham's speech of 2d May. The Aurora, however, seems to deny it altogether; God grant that it may be in the right."

No. 5.—From Clark to Chew and Relf, dated Balize, 29th June, 1803, recommending urgency in sending money to Philadelphia, to relieve their friends there, and expressing great apprehensions.

No. 6—Coxe to Clark, about the latter's family and his own embarrassments. This letter also refers to the fate of Louisiana; says our newspapers from North to South, teem with opposition to it, with the single exception of the Aurora. He thinks that the cession to France will unite all parties in favor of the acquisition of Louisiana, and regrets the abolition of the internal taxes by Mr. Jefferson's party.

In a postscript he gives an account of a duel between Capt. Izard and a Frenchman, growing out of a delicate affair, in which Izard was badly wounded.

No. 7—Letter from Richard Relf, dated 1803, to Clark, referring to his salary for Clark and Coxe.

No. 8—A curious letter from Coxe to Clark, dated Philadelphia, January 5, 1807, complaining of the difficulties Clark had thrown on his hands. He complains also that the abolition society had been brought down on him about some "negro wench." This letter contains the following reference to the Carriere affair—"I must sneak out of a business in which no person durst show his face here, and Mad. Carriere must bear the brunt, &c. 'Tis an unfortunate thing in every point of view, that this lady should have come here under a fallacious hope which cannot be realized, and more so that she should remain in a land of strangers, a tax on yourself and a burden to herself and me. Had she not better return to New Orleans?"

No. 9—From Coxe to Clark, under date, January 6, 1800, he says: "I fear the air of Washington does not agree with either your spirits or temper, and the effects appear to fall on me, for your late letters, in addition to your heavy complaints of me, contain not a syllable of your engagement to Miss C———, which two letters from Baltimore, received in this city, state in positive terms. On this last subject Mrs. Coxe complains of your breach of promise in not communicating the secret to her. Confidence once lost among friends is not easily regained."

No. 10—Coxe to Clark, July 16, 1807, refers to Clark's quarrel with Governor Claiborne, also, to the arrival of the Carrieres, with letters of introduction to him (Coxe); he had procured snug quarters; refers to Clark's popularity in Louisiana; the *eclat* of a brilliant affair of honor.

No. 11—Letter from Relf to Clark, Oct. 28, 1809, referring to his intended marriage.

No. 12—J. H. Finlay to Clark, Philadelphia, Feb. 9, 1808, referring to the intrigues of Governor Wilkinson against Clark.

No. 13—Coxe to Clark, Philadelphia, July 21, 1814, refers to business affairs.

No. 14—Clark to Thomas Wilkins, New Orleans, Feb. 9, 1810, referring to private affairs, stating that he (Clark) had made a handsome fortune, and intended to retire from mercantile life; referring, also, to a loss of $8000, sustained by an ill placed confidence in the collector.

No. 15—W. E. Hulings to Clark, dated Philadelphia, April 20, 1810, referring to business affairs; dwelling upon the pleasures of domestic life, and warning Clark against ambition.

No. 16—Coxe to Clark, dated Philadelphia, Sept. 20, 1810.

No. 17—Eliza Clark to Daniel Clark, Philadelphia, May 19, 1812, stating that Myra was in good health, was very happy, and was beginning to read.

[Here follow several letters from the members of notable Creole families in New Orleans, to Mrs. Zulime Gardette, whilst residing in Bordeaux, and from distinguished persons in the latter place, all indicating intimacy and friendship between the parties.]

A letter from Coxe to Clark, Philadelphia, Nov. 24, 1820, to Bellechasse, asking a reconveyance of the fifty-two lots assigned to him by Clark, as these lots constitute the only heritage of poor Caroline.

One from Relf to Bellechasse, New Orleans, August 21, 1820, stating that Clark had two natural children Myra, who was placed with Davis, and another, who was placed with Hulings. Entirely ignorant of Clark's intentions as to his two children, he desires to know of Bellechasse if the fifty-two lots were intended for Myra alone, or for both children.

TESTIMONY FOR THE DEFENDANT.

LEWIS LESASSIER.

Lewis Lesassier, for defendants, is 53 years of age; came to New Orleans in 1805; knew Daniel Clark; he was a leading politician; stood high as a man of business; never heard of his being married. I was a clerk of Thorn & Co., in St. Louis street, between Chartres and Royal. Chew and Relf kept nearly opposite, where I frequently saw Clark. I don't believe Daniel Clark would be capable of addressing a lady, with a view to marriage, when he had a wife.

HENRY W. PALFREY.

Henry W. Palfrey, for defendants—Is 51 years of age; came to New Orleans in 1810; is acquainted with the parties involved in this suit; was employed as a clerk in the house of Chew and Relf in 1811; knows the handwriting of Clark, and of Chew and Relf; (witness identified handwriting of various letters which will be introduced hereafter.) Mr. Clark lived on the Bayou road, in his latter days. He visited Chew and Relf's store every day. Relf lived with Clark for some months before his (Clark's) death. Never heard of Clark's being a married man. Clark, Relf and Chew were the three principal men of New Orleans. I kept the books of Chew and Relf for four years after the death of Clark. I knew Lubin, Clark's confidential servant; his master and his friends entertained a high opinion of him; but, in 1815, witness caught him stealing cotton.

R. D. SHEPHERD.

R. D. Shepherd, for defendants—I arrived in New Orleans on September 7, 1802; I was well acquainted with Chew and Relf, who did business in New Orleans; also with Daniel Clark; Clark was not in New Orleans in the autumn or the early part of the year 1802. Clark, after his return from Europe, complained of frauds in packing cotton. Clark arrived here in mid-winter of 1802-3, in a vessel direct from Europe. I was well acquainted with Clark, and had several business transactions with him. I visited him frequently at his residence on the Bayou road. He was a man of great note here. I never heard he was married, or saw a lady at his house. I never heard of a widow of his. Clark told me, when he came back from Europe, that he brought the stones or brickbats, and other proofs of the fraudulent packing of the cotton sent to Europe. I am 65, reside in New Orleans in the winter and in Virginia in the summer. I arrived her in 1802; was eighteen years old; came here on a special mission. I returned to New Orleans in 1804; remained here till 1817, since when I have been here at intervals; it is my principal place of business. Mr. Clark's most prominent and confiential friends were Chew and Relf, De la Croix, Pelayvin, John McDonogh, Shepherd, Brown, Bellachasse, Judge Pitot—the two latter were his most intimate friends.

MADAME VEUVE BARBIN DEBELLEVUE.

Madame Delphine Trepagnier, widow of Barbin De Bellevue, for defendants—I am 36 years of age. My husband was in the United States' service eighteen years ago. My mother resided on the Bayou Road, until 1813, near Clark's residence. Daniel Clark visited my mother's family every day. I was living with my

mother then, being unmarried. Had two sisters—one younger and one older—then living with my mother. One of my sisters (the elder) had been married and divorced. This was Heloise; she had been married to François Lambert, from whom she had been divorced. The younger sister was Hortense. Clark paid his addresses to my sister, Heloise Lambert, with a view to marriage. He was engaged to her in 1813, up to the time of his death. He represented himself as a bachelor—never as a widower. Clark spoke French as well as English.

On cross-examination—Clark commenced his addresses to my sister about eight months before his death, when the engagement took place. He had been courting twelve months before his death. I was present and recollect the answer of my sister. I was then 20 years of age. The marriage had been delayed for causes I do not remember; it was to have been celebrated within two months, when it was put an end to, by the death of Clark. My sister, I heard, was divorced by a judgment of a court. It was published in the paper. In 1815, my sister was remarried to her former husband, Mr. Lambert, by a civil contract before a notary, and lived together as man and wife. This act was passed in March, April or May, 1815.

FRANCOIS DUSSAN DELACROIX.

François Dussan Delacroix, for defendants—I arrived in New Orleans in 1793, and am a little over seventy-three years of age; I am a planter. In 1806, or 1807, I was a member of the Legislature of the Territory of New Orleans. I was a Director of the Planters' Bank of Louisiana, President of the Louisiana State Bank, and President of the State Insurance company. I have known Chew and Relf since I lived in New Orleans; always believed them honest; if not, Daniel Clark, who knew human nature as a perfect judge, would not have employed them as a commercial house. When I went to France in 1819, I designated Richard Relf as one of my alternative attornies, in case of the death of either of the two others named, which I would not have done if I had not thought him honest. Daniel Clark was a man of honor and integrity, otherwise he would not have been a friend of mine. Clark was never married; if he had been, I should have known it from my intimacy with him. Mr. Clark told me he had a child with a married woman, an adulterous child; that child was placed by Daniel Clark in the house of Samuel Davis in Terre Bœuf; her name was Myra; she is the same who married Whitney; and subsequently married General Gaines. About two years before Clark's death, he placed in my hands two portions of land on the Bayou Road to be remitted to Myra in case of his death; which portions of land I remitted to Myra the first time she came here with Capt. Davis. I met Captain Davis at the Exchange, and asked him if he had brought Myra; he answered "yes." I then told him I desired to remit the two portions of land which were confided to me by Daniel Clark. The answer of Captain Davis was, "she will not receive that from you because she is entirely ignorant that she is the natural or bastard child of Daniel Clark." But a few days after this she accepted, and the business was settled before a notary.

I saw Daniel Clark the day before his death; he was lying on a mattrass, on the floor of his parlor. When I entered, some persons who were present retired on the gallery. I came close to him, I put my knees on the mattrass where he was lying. He took my hand and kissed it a hundred times, covered it with his tears. In that supreme instant he uttered not a word. In that sacred moment when the most profound secrets involuntarily escape, not a single word escaped him about his pretended marriage. I frequently visited Clark, taking breakfast and dinner with him. I lived in the country. I never saw Madame DeGrange in his house, never heard that Clark was married to her. Clark always spoke to me of Myra as his illegitimate daughter or bastard. Before his death Clark was much embarrassed. In 1810 he sent to me to get my endorsement on a note of $6000, which I gave. A few months before his death, he said he was afraid he would fail, his circumstances were so embarrassing. This I kept a secret. Mr. Clark had a great mania to buy real estate. He was always tormented by the spirit of speculation. Clark once proposed to me to buy a plantation near the city for $72,000—$25,000 cash. When the sale was made he had not a cent to pay his half. I had to raise the whole of it. Fortunately, we sold the plantation two months afterwards to Farrar and Williams, for $125,000. The benefit was but a slight relief to Clark in his embarrassments. In 1812–'13 and '14, money was so scarce in New Orleans the Banks had to suspend payment. Property depreciated in New Orleans very much at that time. Clark was a partner of Chew and Relf. I endorsed notes for the house. The reputation of Madame DeGrange was that of "une femme gallant," as we call it in French. I do not know how it is expressed in English.

On cross-examination—I am not interested in this suit. Mrs. Gaines has sued me, but it is not this suit, which is against Chew and Relf. Whilst in France, my agent, Mr. Cavellier, employed P. A. Rost, Esq., to defend me in a suit in chancery. I do not know what Mr. Rost did in the case. I have never reflected on the consequences (to myself) which might result from the loss of this suit, so monstrous and iniquitous.

GERMAIN MUSSON.

Germain Musson, for defendants—Came to New Orleans in 1803, previous to the change of government; was a clerk for several years, then became a Western merchant; knew D. Clark from my arrival till he died. I never knew Clark was married. The population of merchants and business-men in New Orleans then being small, we knew one another intimately. I never heard he was married.

Question by a Defendant—Was, or not, Daniel Clark represented to be impotent? (Objected to by complainant, as wholly irrelevant, impertinent, and scandalous.)

Witness could not answer; cannot say what was Zulime De Grange's reputation for virtue and purity, I was sixteen when I arrived here. Mr. Clark stood high as a honorable man, and a man of fortune. He was intimate with Col. Bellechasse, Dusnau de la Croix, Judge Pitot, and Edward Livingston.

ZENON CAVELLIER.

Zenon Cavellier, for defendants—I am upwards of 70 years of age, I was born in New Orleans, and have lived here, with only temporary absence, ever since. I was intimate with Clark, from the time of his arrival here. There was a temporary coolness between us, arising from political matters. I never knew, or heard of

Clark's being married ; I always knew him as a bachelor, and a man of good reputation. Never heard any thing to the contrary, until Mrs. Gaines appeared here. I knew Jerome DeGrange. He was a confectioner, and kept in St. Anne street, between Royal and Conde ; I am bound to say the truth, and must state what I have said before, that Mrs. DeGrange was a "*femme gallante.*" Clark was considered the lover of Mrs. De Grange. They were never spoken of as husband and wife. Her maiden name was Zulime Carriere. I don't know whether she was a native or not ; she came here very early, if she was not born here. I am not interested in this suit.

[Here follows a number of interrogatories, inquiring into the witness' connection with the ownership of a certain tract of land, claimed by plaintiff, in Baton Rouge.]

I was intimate, in a business point of view, and friendly with Clark. The coolness which arose between us, after the Spanish Government, was attributable to an event which occurred under that Government. It continued a short time. Clark was considered an honest man, of good reputation ; it is for that reason I think he never was married to that woman, because he knew well her conduct, and was himself a man of delicacy of feeling. When Clark lived in Toulouse street, I was in the habit of taking tea with him, and Chew and Relf. The character and standing of Col. J. D. D. Bellechasse, was that of an honest man. Under the Spanish Government, he was captain in the Louisiana Regiment, was afterwards made a colonel by Governor Claiborne. He was always considered an honest man. I do not know how far the report is true that in 1814 he gave information to the British General. Colonel Bellechasse and Clark were well together, but I never said they were intimate.

I know Pierre Boisfontaine and Judge Pitot ; I believe they were honest men. I was not so intimate with Clark that he would communicate to me the fact of his private marriage. Such communication he would have made to Pitot and Bellechasse. His most intimate friends were Chew and Relf. I knew DeGrange under the Spanish Government ; he was a long time here, and runaway when it was discovered that he had been married in France. He was a very ugly man, about five feet six or seven inches, and stout ; a very common looking man. He married Zulime Carriere. I do not know if he was tried for bigamy ; he may have been ; I was absent at the time. He was reported a bigamist. It was, I believe, in the case of Kean *vs.* Relf, or Relf *vs.* Kean, in Judge Lewis' Court, about 12 or 13 years ago, that I testified that Madame De Grange Nee Carriere was a "femme gallante." I never heard Clark or his friend speak of her. I have heard many others speak of her. If I was forced to it, I could name two individuals, who are now dead, who told me that they had slept with her. I have been, for a number of years, the agent and attorney, in fact, of Dusnau De la Croix. The first time De la Croix left this country for France, was in May, 1829 ; he came back, remained here a short time, and then went away again in August, 1833. I have always continued to hold his power of attorney since. I have long been intimate with De la Croix. There is a suit respecting certain property belonging to Clark's succession, pending between Mrs. Gaines and De la Croix. This suit respects certain negroes. Mr. De la Croix lives on his plantation, and comes very little to town, being blind. I knew Governor Claiborne, was intimate with him ; I was a representative at the time. There was a strong party against him. He offered me several offices ; I refused them all but the directory of the State Library. Clark and Governor Claiborne had a quarrel and duel.

Clark was embarrassed in his pecuniary affairs shortly before his death. Many of his notes were in circulation, and sold at 12 per cent. per annum—a very high discount at that time ; I have seen them in the hands of brokers. Clark was reputed to have an interest in the house of Chew & Relf. Chew and Relf always bore a good reputation here. I knew Relf from a boy, and never knew any thing against him.

Theodore Zachary, for defendants—Proved the verity of certain letters and certificates of Col. Bellechasse, and of Relf, which he had delivered to Col. Bellechasse, in Matanzas, at the request of Mr. Relf.

ETIENNE CARRABY.

Etienne Carraby, for defendants—I was born in New Orleans, and am 75 years of age. I do not know the complainant, but have known Chew and Relf for fifty years. I knew Daniel Clark well, from 1799 to his death in 1813. I was merchant down to 1806. I had some business with Clark, at different times, particularly in 1799, when we had a joint operation from here to Nassau, New Providence, on account of the commercial house of Knox. Clark was a merchant. He enjoyed a good reputation. I never heard any one say he was married—was not a bachelor. I knew De Grange ; he was a manufacturer of syrups and liquors, and lived in St. Anne street, between Royal and Conde. I was acquainted with Madame DeGrange Nee Carriere ; her reputation was bad. It was generally reputed in New Orleans, that Clark lived with Madame DeGrange, in an amorous and illicit connection. He lived with her as a lover. I did not know personally Madame Despau ; but nothing good was said of her. Clark's reputation was that of an honorable and high-spirited gentleman. Clark was too high-minded a man to contract marriage with his paramour.

[NOTE.—We should remark that many of the interrogatories, especially those referring to the reputation of Mesdames DeGrange and Despau, are strongly protested against by complaint's counsel, as impertinent, irrelevant, and scandalous.]

LOUIS BOULIGNY.

Louis Bouligny, for defendants—I am sixty-eight years old. I have resided in New Orleans, or its vicinity, for sixty-eight years. I do not know plaintiff, but have known Relf and Chew for a long time. I was acquainted with Daniel Clark in 1791 or 1792. He used to visit my brother. In 1803 I became intimate with him ; had business transactions with him, and so continued, until his death. In 1803 I had a business transaction with Daniel Clark. We went together to Ouachita, where there was a tract of land which I had sold to Clark. We laid on the same bearskin during the night, and traveled on horseback during the day. I used to take dinner with Clark, and he with me, during several years. Witness used to go and sleep at Clark's house, who was a bachelor, in order not to wake his (witness's) mother late in the night. I was a military man up to 1803, and from that time have been a planter. I was a cadet, and afterwards an officer under the Spanish Government. In 1803 I held the position of 2nd Lieutenant. In February, 1803, I was stationed at the Balize, and on the 1st day of March, 1803, I started from the city of New Orleans to go and receive the

Prefect Laussat and Gen. Victor, who was expected; but the latter did not arrive. When I left for the Balize, Clark was in New Orleans. I had a conversation with him just before I left. Mr. Clark was American Consul in New Orleans. In what year I do not remember. In 1803 Clark held no office under either the Spanish or American Government. Clark was absent from New Orleans about the latter part of the year 1802, about some cotton transactions. Clark told me he had been to Europe. Clark was generally reputed to be a bachelor. He often gave soirées to which gentlemen and ladies were invited. I never heard Clark was married; if he had been, from my intimacy with him, I should have known it. I knew DeGrange by sight; danced with Madame DeGrange at the balls. The general reputation of Madame DeGrange was bad. Public opinion had it that Clark was the lover of Madame DeGrange. Clark never spoke to me of Madame DeGrange, as either his wife or lover. I only knew Madame DeGrange by sight; knew nothing of her reputation. Clark could not have been married to a lady who did not enjoy a spotless reputation.

A young lady of this country, a widow, by the name of Miss Trepagnier, being divorced from Mr. François Lambert, was courted by Mr. Clark, as Clark told witness, with a view to marriage. This was in 1809-10 or 11. Clark owed me $10,000 at the time of his death. I gave the executors time, and they paid it. Clark was so much embarrassed before his death, that he told me he had only taken the contract for the canal for $50,000, as he was much in need of that sum. I refer to the Canal Carondelet. I have known Chew and Relf a long time; they always bore good characters. I am Recorder of Mortgages of the Parish of Jefferson, and have held the office since 1840. The debt due me was paid by Mr. Zenon Cavallier, who bought property on the Metairie Road from Daniel Clark, which was mortgaged in favor of witness; portion of the debt due me was paid by Chew and Relf. I had inherited a tract of land known as the Maison Rouge concession. I sold half of it, under private signature, in 1803, to Mr. Clark. P. Sauvé and Dusnau De la Croix were witnesses to the act. The other half I sold to Daniel Clark in 1812. It was thus he became indebted to me for $10,000. I inherited this tract by testamentary donation from the Marquis de Maison Rouge. I was twenty-two years of age when I sold this land to Clark. Clark was eight or nine years older than myself. The most prominent men in New Orleans, at that time, were the family of Cavellier, the two Urquharts, Michael Fortier, Dr. Dow, J. B. Labatut, Major Nott, Bellechasse, Destrehan, Gov. Villere, Governor Derbigny, General Laronde, Dusnau de la Croix. All these were friends of Daniel Clark, and if they had not had a good opinion of him, they could not have been his friends. I served as an officer with Col. Bellechasse. He was a highly honorable man, and commanded the militia of New Orleans, and was President of the Senate under the Territorial Government. He was one of the most intimate and confidential friends of Daniel Clark. Judge Pitot was a man of very good reputation. He was Mayor of the city under the Territorial Government, and afterwards Parish Judge. I knew Pierre Baron Boisfontaine. He was an honorable man; was manager of Clark's plantations. He had previously managed a plantation at Natchez, known as the Desert plantation, and he afterwards came with the negroes to establish the Houma plantation.

I danced with Madame DeGrange between 1798 and 1804; I saw her at every public ball, but not at society balls; there was only one public ball-room in New Orleans at that period. Rumour said that the intimacy between Clark and Madame DeGrange began during the presence of her husband here—that is, in 1800, and continued for a long while. I never met Madame De Grange at the *soirées* given by Clark, or at any other private parties or *soirées* given in Clark's circle of society. Previous to Clark's death, Chew and family occupied a portion of his house; he was always very intimate with him and Relf. Mr. Chew has been Collector of the Customs for this port; Mr. Relf has been Cashier of the State Bank from its creation.

MADAME MARIE VILLERE DUCANAU.

Madame Marie Villeré Ducanau, (a sister of the late Governor Villeré,) sworn for defendants: I am eighty years and six months of age. I reside in New Orleans. I was born in New Orleans, and never went further from it than to the Lake. I knew Daniel Clark very well; I knew him when he was eighteen or twenty years of age, and our acquaintance continued until the time of his death. I never heard that Clark was married. He was never married, positively. I know that he was never married, because I always heard that he was never married, and that he had good reason not to marry. I always heard that he could not be married, because, at the age of about 16 or 17, he was afflicted with a disease, the result of which was to prevent his ever after being married; but fortunately, he had the money to pay his "*soi disant maitresses.*" Daniel Clark was always reputed, in New Orleans, to be an unmarried man; his reputation was that of a man "*comme il faut.*" I never heard he was married, and always heard that he could not be married. I know Madame Zulime DeGrange Nee Carriere by reputation only. I never heard that she was married to Clark. Her reputation was not that of an honest woman, but perhaps it was not true. The reputation of Madame Despau was about that of her sister. These ladies did not mingle in the same society with Daniel Clark.

My maiden name is Marie Rey Villeré. I was born in New Orleans; my maternal language is French. I knew Clark when he was about 16 years of age. He visited my house, and I visited his aunt. I never enjoyed his confidence. I was seventeen years of age when I was married. I have been married but once. My husband was Simon Ducanau. The equivocal character of Madame DeGrange was of general repute. I was intimate with persons of high standing and prominence in Louisiana, during the lifetime of Daniel Clark. I knew Chew and Relf; their reputation was that of honest merchants.

S. Field, for defendants—Proved that in the fall of 1813, he met Beverly Chew in Philadelphia, and crossed the mountains with him to Pittsburgh.

P. J. TRICOU.

P. J. Tricou—Knew Clark; always heard that he was an unmarried man. I heard that Clark was impotent. It was said so by women whom I visited myself at that time. I was then about twenty years of age. I saw Madame DeGrange in my mother's saloon. Knowing that she had a bad reputation, I informed my mother of it, and since that time have never seen

her except in the streets. Madame DeGrange was considered as the mistress (*amante*) of Daniel Clark. The reputation of Madame Despau was on the same footing as that of Madame DeGrange. From my knowledge of Clark, I do not really believe that he would have married a lady who did not enjoy a spotless reputation. Chew and Relf have always enjoyed the first reputation in New Orleans. Relf has been Cashier of the State Bank, Mr. Chew, Collector of the Customs, and Cashier of Canal Bank. I always heard to the contrary that Clark was married. Mr. Clark always considered Chew and Relf, then young men, as his children.

One day I heard a conversation between my mother and Daniel Clark (not sooner than 1806, nor latter than 1810,) in which she was teazing him for not being married; and told him he should get married; and he answered that it was "*trop tard*,"—the time was over. Clark never intimated to me in any manner that he was a married man. Our intimacy was not, therefore, such as to justify his communicating to me the fact of his secret marriage.

HORATIO DAVIS.

Horatio Davis, for defendants, being shown the printed statement below—Says that he made the publication; it was in May, 1841. The original of the letter, dated at New Orleans, 14th October, 1805—from Daniel Clark to his sister—was handed to me by Mr. Barton, at present chargè at Chili, and by Doctor Barnes, the husband of a lady claiming to be the daughter of Daniel Clark, I took a copy, and returned the original. I believe it was written by Clark. The printed copy is correct.

The infant Myra was brought to my father's house some time in the year 1804. I did not, at that time, know whose child she was: I, however, before long, heard her spoken of by members of the family as the child of Daniel Clark. I was too young to have noted whether it was a natural, or a legitimate child. I left New Orleans in the summer of 1806 to go to the North, for an education. My mother arrived in Baltimore with Myra, then a little girl, in 1812, while I was at college at that place. From that period up to the present time, I have never had any reason to believe that any member of my family ever looked upon her in any other light than as the natural child of Mr. Clark. Myra was always treated by every member of the family as my sister. Neither directly nor indirectly was it communicated to her by any member of the family, or by any of the servants, in my presence, that she was any other than the daughter of my father and mother. We seldom spoke of her relation to Mr. Clark; but when she was so spoken of, it was as his natural daughter. I am the son of Samuel Boyer Davis and Mary Ann Rose Baron, his wife, now deceased. I was born on 23d July, 1795, and am a resident of New Orleans.

I re-affirm the statement made in the printed publication referred to before, which is as follows:

Messrs. Editors: In a statement by Mrs. Gaines, published in your paper of the 11th inst., I am charged with leaguing with her enemies, in the year 1817. The charge is one affecting honor, and as it appeared in your columns, I pray that you will have the goodness to insert the following defence.

Yours respectfully, H. D.

"*Statement written and signed by Myra Clark Gaines, and read by her in the District Court, May* 7, 1841.

Richard Relf and Beverly Chew, in the year 1817, having learned that their victim had found, in the wife of Colonel Samuel B. Davis, a benevolent friend and adopted mother, apprehended that she could not be *safely disposed of*, so as to prevent her future growth and improvement; for they learned that *Myra Clark*, though known to her immediate associates only as Myra Davis, was receiving from Mrs. Davis the care and kindness of a devoted mother, and though in the eleventh year of her age, had made such progress in the attainment of knowledge, as to fill these lawless executors of my father, Daniel Clark, with serious apprehension that they might ere long find in his only child a power of mind and moral courage that would drag them out of their *banks of ill got gold*, in which they were then fortifying themselves. These miserable men, who had often quailed under the evanescent frown of the high-spirited but generous father, naturally feared to meet at mature age, the injured daughter, lest she should inherit too much of the *mind and spirit* of the father for their repose or safety. After due deliberation, aided by counsel worthy of such clients, they determined *to get up a case of alimony*, by which they could make it appear that this orphan child of their deceased benefactor had made admissions, in her eleventh year, which would enable them to abuse and calumniate her *when of age!* This extraordinary proceeding, got up in 1817 for after use, was published by Richard Relf in 1835, and since, anonymously, in the year 1839. This alimony case, which follows, will be seen by every honest mind to contain irrefragible evidence of the weakness of a case that could require, or even [illegible], the enormities of such a proceeding. In examining this case, it is proper to bear in mind the fact, that, at the time this case was got up in New Orleans, Myra Clark was not only unconscious of her being any other than Myra Davis, the daughter of Colonel S. B Davis, and Mrs. A. R. Davis, whom she had considered as her parents, and by whom she had been treated as their daughter, from the earliest moments of her childhood to which her memory could revert; but she was, during the summer of 1817, with her supposed mother, Mrs. Davis, in the city of Philadelphia, in the enjoyment of every comfort; nor did she learn any thing about this extraordinary alimony suit, until more than twelve years after its *commencement and discontinuance!*

Myra! Did you write, sign and read this statement before the District Court—in the presence of a jury—a crowded audience?

Are you the Myra I have seen in her helplessness resting on the breast, from which, in my infancy, I received the sustenance that mothers give their children? Are you the Myra I have seen nestling on the manly bosom of my father? Are you the Myra that I have so often lulled to sleep with all a brother's love, and whose infant steps I have supported?

Are you that Myra? And could you *deliberately write with a view publicly to read* these words: "After due deliberation, aided by COUNSEL *worthy of such* CLIENTS they determined to get up a case of alimony, by which they could make it appear that this orphan child of their deceased benefactor had made admissions, in her eleventh year, which would enable them to *abuse and calumniate* her when of age?

The two petitions you publish were signed Davis and Peirce.* You knew that *I* had written and presented these petitions, claiming alimony for you; and in support of the baseless charge by which you seek to fasteo dishonor upon me, and upon a name that had been lent to you, my father's authority is brought to bear against me—"*Colonel Samuel B. Davis has publicly declared that he never authorised or sanctioned such a suit;*" thereby placing me in the alternative of either submitting in silence to a false and disgraceful imputation, or of publicly raising a question of veracity between my father and myself!

Have you a heart, and could you do this? Did not your eye wander from this disavowal of my father to another part of his public letter, wbere he says, "Connected with Mr. Clark by great intimacy, I became acquainted with the birth of his daughter when it occurred. He desired that the circumstance should be kept secret, and so it was by me. The child was placed where it was supposed she would be properly attended to; and Mr. Clark leaving New Orleans for a short time very soon after, I consented to see that this was done. It was soon apparent that the infant was neglected, and after some hesitation, I communicated the facts to my wife. She went at once to see the child, was touched with compassion at her forlorn and desolate situation, and generously consented to take her at once to her own house." Could not the sight of this passage bring better feelings to your bosom, and arrest your unhallowed purpose of arraying against each other the husband and only son of your benefactress? Was there no inward sense of gratitude to restrain you? Oh, shame! shame! It is true that I made the application in behalf of my father—that I did so by his direction: he furnished me with the grounds for the application.

After a lapse of twenty years, that he should have forgotten the part that he took in the transaction, is not so remarkable, as that you, who "*had made such progress in the attainment of knowledge*," should have been misled by your memory, when you state that at the time of filing the petition you were in Philadelphia with my mother, "*enjoying every comfort.*" In 1817, my mother was on the sugar estate, in the parish of St. Bernard, and did not return to Philadelphia till the spring of 1818, after my father had sold the estate. *You* were going to school in Philadelphia, and resided with Mrs. Patterson.

Even your excellent memory sometimes deserts you, not only in the way of forgetfulness of benefits, but also in the forgetfulness

* The two petitions were signed by me, Davis & Peirce, because we were partners. Mr. Peirce, as well as I can now remember, was at the time filing the petition, ill of the fever.

of records. You seem to have forgotten that in answer to a cross interrogatory, propounded by Mr. Whitney, your late husband, to my father, in the case of Richard Relf vs. W. W Whitney, and filed on the 19th December, 1836, my father said:

"I have no recollection of any such suit (the alimony suit,) as is inquired of, being instituted, nor how it came to be brought, though my name have been used therein as curator *ad litem*. *I remember only that Mr. Edward Livingston said to me, that all treaty might be obtained for Myra; and I remember that Mr. Chew or Relf, but I believe Relf, spoke to me, and said—' The affairs of the estate were so unsettled, that nothing could be done for her then, but that when settled they might be able to do something for her;' and if the suit was discontinued, it was in consequence of this statement*, Mr. Clark did frequently express to me, his intention of educating and supporting Myra in his own rank of life and providing for her; but I never heard him say when he meant to do it."

The bringing of the suit was the consequence of his conversation with Mr. Livingston, who was to have given me his assistance in conducting it.

After the conversation with Mr. Relf, by direction of my father I moved for its discontinuance.

You have alleged, and by the testimony of your aunt, Mrs. Derpan, now on record, have endeavored to prove, that Daniel Clark was married in Philadelphia, in the year 1803, to Mrs. DeGrange, your mother, and you take offence, and accuse me, because you were styled, in the petition, a natural daughter of Daniel Clark. Let what follows show. From your infancy I had never heard you designated otherwise. I believed you to be his natural daughter, and so named you, in the petition to *establish your title to alimony*. That I was not singular in this belief, I refer you to the testimony of one of your own witnesses, Mr. de la Croix, *the intimate friend of your father*, and who, under the *last* will *was to have been your tutor*. Page 282, (printed edition,) in the answers of interrogations 4th and 5th, he twice calls you *the natural daughter* of Mr. Clark; and in answer to the 6th interrogation, he says—" Mr. Clark asked my consent, also, to become the tutor of said child Myra, and told me that his intention was, *to leave her a fortune sufficient to efface, if possible, the dishonor of her birth*"

In the case of Barnes and wife vs. Gaines and wife, in the First District Court, by the testimony of Mr. and Mrs. Baron Boisfontaine, (in whose house you were born,) it is proved that you were born in 1804. That such was the fact, I have a personal knowledge. In November 30th, 1805, *seventeen months after your birth*, Mrs. DeGrange presented the following petition to the County Court of New Orleans:

[Here follows a copy of Madame DeGrange's petition against her husband for alimony, alleging that she has been cruelly and barbarously treated by *her husband*, Jerome DeGrange, from the 2d September to this day; prays for $500 per annum. Filed 30th November, 1805.]

Now hear Mr. Clark's voice. One month before your mother's application for alimony, from her husband, DeGrange, he writes to his sister, Mrs. Green, of Liverpool, as follows:

"NEW ORLEANS, 14th Oct., 1805.

"My Dear Sister—I have received your letter of the 3d May, and thank you kindly for the pains you took in filling the toilette. *I assure you that it would have given me infinite pleasure to have offered it either to Mrs. Clark, or any person likely to become Mrs. Clark, but this will not be the case for some time to come*: for, as long as I have the misfortune to be hampered with business, *so long will I remain single*, for fear of misfortune or accident.

"To the public, before whom you have so unnecessarily dragged me, I leave to determine whether or not I have repelled your accusation." HORATIO DAVIS.

JACOB HART.

Jacob Hart, for defendants—I knew Madame DeGrange in 1805 or 1806: DeGrange was presented to me as her husband, in the streets in 1806 or 1807; Madame DeGrange, at that time, went into the best society; I became acquainted with her in a private family; subsequently, she did not stand as fair, but had the reputation of intriguing with gentlemen a great deal; this is only hearsay; I think this was about the years 1808 and 1809; I left here in 1810; I always understood Clark was a single man. The report was ge neral that Clark was impotent, both among men and women, I heard it a number of times; I heard it from females probably a dozen times—repeatedly. I arrived in New Orleans in 1804. I am 68 years of age. DeGrange had the appearance of a common man; he was about five feet six inches in height, rather thinly inclined. His hair was light. He had a very common look, was ugly and [illegible]-mannered; he was about 36 years of age. I boarded [illegible] Mrs. DeGrange was in the habit of visiting three or four time a week; I met Mrs. DeGrange frequently in the first society of New Orleans: I occasionally met Clark in the same society. I cannot name any persons who spoke of Mrs. DeGrange's reputation or of Clark's impotency.

JEAN CANON.

Jean Canon, for defendants—I am 63 years of age; was borne in New Orleans; knew Daniel Clark and Myra, his daughter by Madame DeGrange. At the request of Clark, bought a Choctaw pony for her, and had a saddle and bridle made by James Martin. I took the pony up to Mr. Davis's. When I arrived there the child was asleep; they woke her up, and I took her and put her on the pony, and held her in the saddle with one hand, and led him around the yard with the other. Previous to this, Myra had been with Mrs. Harper; Clark met me one day and requested me to go and send Dr. Watkins to Mrs. Harper's to see the child, who was sick. I took Watkins' opinion of her to Clark, at the bank of which he was a director. Mrs. DeGrange did not suckle her child, as she wanted to get out of the way of DeGrange or his first wife. Clark spoke of Madame DeGrange as a beautiful woman, and very deservedly, for she really was a beautiful woman; Clark sent for me one day, about 2 o'clock, P. M. When I entered the house, I found Clark sitting on a small canopy and holding in his hand a grape. The servant was arranging his bed on the floor. I asked him how he felt, and he replied "Badly; I am unwell." He then said he had sent for me to take and deliver to John McDonogh some six or seven old negroes, which he had sold to him. I delivered the negroes to Mr. McDonogh's overseer, on the Gentilly plantation, which afterwards belonged to Judge Martin. In returning, I reached Clark's house a little before sundown; was surprised to see all the doors and windows open and feared something had happened. On reaching the house I saw Mr. Relf standing on the gallery; he was weeping, and he said to me, "he is dead;" Baron Boisfontaine was at the house, and also Cadet de Jean. The latter said to me, send me your razors and soap-box, as I want to shave Mr. Clark, which I did. Clark kept his amours secret, as he had several such connexions, and it would have given him trouble had his particular female friends known of them. I do not know whether Clark was married; if he was, it was not here, it must have been at the North, otherwise Chew and Relf would have known it, as they were very intimate with him here, and everybody else would have known it. Clark never told me he was married. I always forbore questioning him about Madame DeGrange, as I knew that Clark had an intrigue with her, but frequently in conversation, in speaking of beautiful women, Clark would ask me what I thought of Madame DeGrange. Clark courted a great many ladies in New Orleans; when Clark saw a pretty woman, he fell in love with her. I knew Jerome DeGrange; he kept an establishment in St. Anne street, and sold liquors; he was a short, thick, set man, with a round, red face, and light or auburn hair.

[Then follows the testimony of certain notaries and other parties, authenticating public domuments.]

ISADORE A. QUEMPER.

Isadore A. Quemper, for defendants—Is keeper of the records of the Cathedral of St. Louis, of this city. It is customary with the French and Creole population of New Orleans to give nicknames or soubriquets to their

children; and witness has found great difficulty and confusion in consequence, in examining the records of the church, to find the real name intended, because they generally apply for the sonbriquets or nicknames. This state of things arises, in part, from the fact that the Catholic priests will not christen a child, nor baptize, nor marry parties by family nicknames or sonbriquets. The name of Zulime is a nickname. I do not think there is a saint by that name. The priests who perform the ceremony record the acts. They are kept double to guard against loss from fire.

W. W. Montoomery.

W. W. Montgomery proved handwriting of certain documents; also, that he had loaned $2000 to Clark a few days before his death, and the good character and public services of Chew and Relf—never had their integrity been doubted, except by persons connected with Mrs. Gaines's suit. Clark was an honorable, high-minded man. He had too much honor to address one lady when he was married to another. I know Myra when a child, as the adopted child of Samuel B. Davis. Witness gave further testimony to the good reputation of Chew and Relf, stating that the former was in the battle of the 23d December, and continued on service till the evacuation of the British; Relf was a member of a fire company, and the firemen turned out to maintain the police of the city at that time. Also proved the high character of Judge Pitot and others.

Fanny Duchaufour.

Fanny Duchaufour, for defendants—I reside in New Orleans, where I have been for the last twenty-eight years. I was born in Philadelphia; am fifty-two years old; am daughter of Dr. James Gardette, formerly dentist in Philadelphia; my mother died in 1807. About eight or nine months after my mother's death, my father married Mrs. DeGrange, who then went by the name of Carriere. I heard they were married in Philadelphia; I was then at school. When I returned, my father presented me to her as my step-mother. They resided in Philadelphia until 1829, when they went to France. My father died in Bordeaux, Aug. 11, 1831. I was very young at the time, but it is very positive that Madame DeGrange's reputation was not good. It is positive that her reputation was bad. I never knew anything about Madame Despau until she came to my father's house. I then heard as much bad of her, as I did of her sister, Zulime Carriere. I never heard Madame Zulime, after she was married to Dr. Gardette, say that she had been married to Daniel Clark. I heard that previous to her marriage with Dr. Gardette. Zulime had a child, a girl. I asked her about it, and she positively denied it, saying that the child was Madame Lambert's and Daniel Clark's. Madame Lambert was Miss Trepagnier. She made this denial in the presence of my father. Zulime had three boys by Dr. Gardette, their names were James, Alvarez, and Edmund. My father and Madame De Grange were married in 1808. I was married three times. My father was received in good society in Philadelphia; every one was astonished that he should have married as he did. He was considered a man well off. I had but little to do with my mother-in-law, marrying soon after my return from school. Madame Gardette, née Carriere went to France with my father, and remained there with him until his death.

Adele Talzia Bournos, nee Gardette.

Adele Talzia Bournos—I have resided in New Orleans thirty years; my father was Dr. James Gardette, (confirms the foregoing facts in relation to her father's marriage with Mrs. DeGrange). I left my father in 1817; went to Nashville; for two years I corresponded with my father, since then have heard nothing from them, nor received anything from his estate. He died in Bordeaux. I was very young when my father married Mrs. DeGrange; I was about nine; I never heard any good of Madame DeGrange; she was always very unkind and unjust to me. I suffered greatly under her, and the first chance I got I went away, never to return; never saw my father afterwards. I always heard that Madame Despau, who lived two years at my father's house, was no better than her sister. (In other respects, the deposition of Madame Bournos conforms to that of Madame Duchaufour).

Joachim Courcelle, for defendants—Knew Clark well; never heard he was married; knew DeGrange, he was a watchmaker. I was acquainted with Madame De Grange; have been in circles where her reputation was spoken of very slightly; she was very "*coquette et legere*;" what was stated of Madame DeGrange was also said of Madame Despau. Clark was an honorable, high-spirited gentleman. He was reputed to be courting Mrs. Lambert, formerly Miss Trepagnier. Clark was not a man to contract a marriage that would dishonor him. Knew Colonel Bellechasse and Judge Pitot, they were honorable men.

Mrs. Sarah M. Smith, for defendants—Proved Beverly Chew's marriage at her house, in 1810, to Maria Theodora Duer, and the intimacy of Clark with him, who had a seat at his table. Chew left New Orleans for the North in 1813, in the brig Astrea, and was at sea on the 4th of July of that year. Mr. Clark was always supposed to be a married man; have an indistinct recollection of a child, Myra, being with Mr. Davis, an Englishman.

Louis Bouligny, recalled and examined—Says that Clark had the reputation of courting a great many women; but it was said by some *femmes galiants* that he was impotent. Clark was strong, and of great energy and courage.

Eulalie Watkins, for defendants—I knew Daniel Clark; my husband was his physician. Clark would not have paid his addresses to a lady if he had been married; he was an honorable man. I never knew Madame DeGrange; I saw her once; she was reputed to be very handsome; she was remarkable for her beauty. My husband was once called upon by Mr. Clark to attend a lady who was about being confined; this was, I believe, in 1804. My husband afterwards told me that the lady he was called for, was Madame Despau, a sister of Madame DeGrange.

B. Dijean, for defendants—Clark could not have concealed his marriage, it was rumored he was impotent. Don't believe Clark would address one lady when he was married to another. Reputation of Chew and Relf very good.

Hilary Julien Domingon, for defendants—Is sixty years and seven months of age; has lived in New Orleans forty-five years four days and nine hours; knew Clark well; his character was much discussed in the public papers. I cannot recollect that I ever read in

the Louisiana Courier, certain interrogatories propounded to Daniel Clark, asking him how much money he had offered to certain physicians to give him a certificate of his potency. I heard Madame DeGrange spoken of as a *femme gallant*. If Clark had been married, it would have been known; he always liked the company of ladies; he was always with them, and it was said that the reason of his being so much with them was, that he was impotent. He, however, had the reputation of having several mistresses. I do not recollect that Madame DeGrange, at that time, was reputed as his mistress.

Charles Harrod, for defendants—I knew Danl. Clark; he was considered an honorable man, and rich. I always thought him a bachelor; we frequently joked with him about a lady in Baltimore, whom we supposed he was going to marry; our conversation was always that of bachelors; he was so considered in New Orleans. He was not a man who would address a lady when already married to another. Messrs. Chew and Relf have always been considered honorable men; they are not capable of suppressing a will or plundering an estate. I first landed in New Orleans 14th July, 1809, have resided here ever since, and am sixty-four years of age.

Daniel W. Coxe.

Daniel W. Coxe, for defendants—I have no interest in this suit. [Witness then entered into a statement of his affairs with Relf and Chew, and his purchase of a large amount of property of the succession of Clark, to settle a charge against Clark, which he had, of $172,950; if he was deprived of this property by Mrs. Gaines being declared heir-at-law, he should sue her for the money paid.] Knew the mother of Daniel Clark; she died at Germantown, in 1823, leaving a will. I made suggestions to Mrs. Clark about her will, that she should provide for Caroline Clark, an illigitimate child of Daniel Clark, and also maintain Myra, who, we had been informed by Col. Davis, was also an illegitimate daughter of Clark's. I have known Relf and Chew a long time. I first saw Myra Davis in 1818; it was on board of a vessel of Captain Simon Toby's; she was under care of Col. S. B. Davis, and was called Myra. Never knew General Gaines till his marriage with his present wife. I have known Delacroix since 1797. I was acquainted with Daniel Clark from 1791 until his death, August, 1813. The last time I saw him was in Philadelphia, in 1811. I was intimately acquainted with him. I was associated in commercial business with Clark from 1792 until July 1811. In our settlement, in 1811, Clark was found largely in debt, as see my accounts. Clark repeatedly confessed his inability to pay the balance due me. His letters to me (shortly befor his death,) were couched in terms of deep gloom. He frequently referred to his pecuniary distresses. Clark was in Europe in 1802. He arrived in this city in a vessel from New Orleans, during the last days of July, 1802. He was at Wilmington on 22d July, 1802. He was kept in quarantine. On arrival in Philadelphia, he made preparations for an immediate departure for Europe, and in a few days left for New York, from whence he sailed for Europe, previous to the middle of August. He remained in Europe until the latter days of November, 1802, when he sailed directly from Europe to New Orleans, where he arrived, as I understood, in the latter part of the winter, or last days of February, 1803. I corresponded with Clark at the time of his visit to Europe. He went there on our commercial business; our business at that time rendering it necessary for us to know the existing and probable future political state of England and the Continent generlly. I believe that Clark left Europe for the United States in the latter part of November, 1802. The ship Thomas, in which Clark sailed for Europe, put into Kingston, was detained, and made a long voyage. Clark was in Philadelphia, in 1802, on two occasions—in April, when he left with me a power of attorney. Immediately after, he left for New Orleans, where he remained until June, and then sailed to Philadelphia, on his way to Europe. Arrived in Philadelpia during the last days of July, 1802. I saw him every day whilst in Philadelphia. He had pressing business, which engaged all his time. My personal relations with Clark in 1802–1803, were of the most intimate and confidential character. Such were our relations, that I do not believe he would have married in Philadelphia, or elsewhere, withhut informing me of it, and inviting me to his wedding. Clark wrote to me about his relations with Madame DeGrange, mother of Myra. In the early part of the year 1802, the said Madame DeGrange presented herself to me, with a letter from Daniel Clark, introducing her to me, and informing me in confidence that the bearer of the letter was pregnant with a child by him, and requesting me, as his friend, to make suitable provision for her, and to place her under the care of a respectable physician, requesting me, at the same time, to furnish her with whatever money she might want and stand in need of during her stay in Philadelphia. I attended to his wishes; employed the late William Shippen, M. D., to attend to her during her confinement, and procured a nurse for her. Soon after the birth of the child, it was taken to the residence of its nurse. The child was called Caroline Clark; and, at the request of Mr. Clark, was left under my general charge and exclusive care until 1811. She is now dead, so is Dr. Shippen. Sortly after the birth of Caroline, Clark arrived in this city, in April, 1803, when I received from him the expression of his wishes in reference to this child. He left here shortly afterwards, as before stated. During his subsequent visits, Clark always visited this child, acknowledged and caressed it as his own and continued to give me the expression of his wishes in reference to her. In a conversation with me, about Madame DeGrange, immediately after the birth of Caroline, he stated to me that he was the father of this illegitimate child, Caroline, and he wished me to take care of the child, and let the woman have what money she stood in need of, until she returned to New Orleans.

Daniel Clark both spoke and wrote to me on the subject of the proposed marriage which he desired to bring about between himself and a lady of Maryland. The lady's name was Louisa Caton. She was the grand-daughter of the late Charles Carroll, of Carrollton. Daniel Clark did address that lady, with the view of marriage, in 1807 or 1808, and there was, as I was informed by Mr. Clark, a partial engagement between them. Mr. Clark informed me that this engagement was subsequently dissolved, in consequence of high pecuniary demands made by the friends of that lady, to be made in the form of a settlement in her behalf, and beyond his means to comply with. Mr. Clark also

informed me that there was a subsequent effort made to renew this engagement with Miss Caton, chiefly through the instrumentality of Robert Goodloe Harper, who had married an aunt of Miss Caton. The same obstacles interfered, and I may add, that, as Mr. Clark consulted me upon this subject, I also interposed my objections to his encumbering himself with heavy pecuniary stipulations, as it would greatly embarrass him, and me also, in our business relations. The letter of Clark's to me, introducing Mrs. DeGrange, has been destroyed. Clark's father died a few years before the son; his mother survived him. His family always spoke of Clark as unmarried. I was intimate with all of them. Mrs. DeGrange left Philadelphia as soon after the birth of Caroline as it was prudent, in the spring of 1802, for New Orleans. She returned to New Orleans, according to the best of my recollection, in the autumn of 1807, and did not leave until her marriage with Dr. Gardette. She was married at St. Joseph's Church, by Right Rev. Michel Egan, August 2d, 1808. She was married by her maiden name, Marie Zulime Carriere. (Annexes certificate of marriage.) She continued to reside in Philadelphia, with her husband, until 1829 or '30, when she removed to France. She had children by Dr. Gardette. No man would be tolerated in society in Philadelphia, who would attempt to palm off on the community a woman, as his lawful wife, if it were known she was not so.

Daniel Clark was in Philadelphia several times after Zulime's marriage to Doctor Gardette. I never heard him protest against her being Gardette's wife. Daniel Clark was a high-tempered and chivalrous man; his disposition was quick and impetuous; no man would more promptly resent an imputation against his honor and integrity. He would never have submitted to the indignity of allowing another man to take his wife. I am perfectly sure that if Daniel Clark had been in truth a married man, whether that marriage had been public or private, and that wife still living, he would never have held himself out to the community and the social circles in which he moved directly or indirectly, as an unmarried man. I am equally sure, that in the case supposed, Clark would never have approached a lady with a view to marriage, if he had been at the time a married man. No man who knew Clark, would believe him capable of conceiving acts so atrocious. I annex several letters between Clark and myself, relative to business matters, also relative to the affair of Miss Caton. That lady resided at the time at Annapolis, in Maryland. Hearing of the alleged will of 1811, I addressed Mr. Mazureau on the subject, and received the letter from him which follows, dated 1st May, 1842.

In the year 1808, after Madame DeGrange had returned to Philadelphia, from New Orleans, and when lodging in Walnut street, she sent for me, and during a private interview with her, at Mrs. Rowan's, she stated that she had heard Mr. Clark was going to be married to Miss Caton, of Baltimore, which, she said, was a violation of his promise to marry her; and added, that she now considered herself at liberty to connect herself in marriage with another person. Dr. Gardette shortly afterwards entered the room. In a few days after, I saw the notice of her marriage to him. When Mr. Clark visited Philadelphia, he had a room at my house. When he was there in 1802, he staid a part of the time at Germantown and a part at my house, and occasionally at a hotel.

On cross-examination.—Some of the reasons why the marriage of Clark with Miss Caton was not consummated, were, the unreasonable exactions made on behalf of the lady, in the matter of a pecuniary settlement. Mr. Clark, on reflection, told me he thought the match not an eligible one.

It is difficult to say what were the most prominent and striking traits of character which distinguished Daniel Clark. He was a high-minded, honorable man; quick in his impulses, ardent in his temperament, actuated, as I believe, by the highest sense of honor, integrity and justice; he was a proud, ambitious and aspiring man. He possessed remarkable spirit and energy. His social feelings were cordial, and his natural affections strong and ardent. I refer to his letters to me, written at a time of great pecuniary distress, as illustrative of these traits. My pecuniary circumstances were very limited and embarrassed in 1811, when Clark visited Philadelphia.

[Here follow various documents, annexed to Coxe's deposition. Exhibit A. Account current between Coxe and Chew and Relf, Clark's Executors, 27th Feb., 1819; also articles of agreement of cession of Coxe's interest in their joint affair to Clark, for $150,000. Then follow other exhibits of Clark's properties, debts due, &c.; marriage certificate of James Gardette to Marie Zulime Carrière.]

MAZUREAU'S LETTER.

The following is the purport of the letter from the late Etienne Mazureau, referred to in Mr. Coxe's deposition:

Mr. Mazureau says: "that he was asked by the late Daniel Clark whether a certain will, of which he showed me a rough sketch, would be valid in law in the then territory." This will stated Myra to be his *natural* child, and instituted her his universal heir, leaving to his own mother an annual rent, I believe, of $3000. Clark said the mother was Madame DeGrange. That woman was married, and DeGrange was alive when the girl was born. I recollect having heard a good deal of talk about it at the time; but never heard your name (Coxe) mentioned as connected with that love affair.

"Yes," said Clark, "she was married I know, and what matters it? The ruffian (who kept a confectionary shop here) had deceived that pretty woman; he was married when he courted her and became her husband; and as it was reported, he ran away afterwards, from fear of being prosecuted. So you see this marriage was null." "That may be, but until so declared by a competent tribunal, the marriage exists, and the child is of such a class of bastards (adulterous bastards) as not to be capable, by our laws, of receiving—by will, from her supposed father—anything beyond which may be necessary for her sustenance and education. Such are the positive provisions of our Code. The Spanish laws were somewhat more favorable. They permitted the father to leave such a child one-fifth of the whole of his estate, but our Code has restricted that to mere alimony.

"I showed Clark both the Codes and the Spanish laws, and though apparently disappointed, he expressed his satisfaction that he could not make the will he intended to make. I went further, and showed him that the

girl could not be legitimate, or even acknowledged as his child, by subsequent marriage or otherwise. I showed him, also, that if his mother survived him, she was his forced heir, and that in supposing that he could leave to the child anything beyond what was necessary for sustenance, it could not be of the value of more than one-third of his estate, as his mother was entitled to take and receive two-thirds, clear of all charges or dispositions."

"What shall I do, then?" asked Clark. "Sir, if you have friends to whom you can place your confidence, convey them secretly some of your property, or give them money, for the use of the child, to be given to her by them when she becomes of age." "That I'll do," said Mr. Clark, and we separated. I heard afterwards from him and Bellechasse, that he had followed my counsel. The first husband of Myra wanted to retain me as his counsel, to sustain his claim under the pretended will, (which I sincerely think never was executed,) as universal heir of Mr. Clark. That I declined, from the motives above expressed; and as he confessed to me that the friends of Clark had conveyed to her the property which he had trusted them with for her use, I advised him to be contented with what he had. The present husband of Myra came once to ask me whether I had any knowledge of a will in favor of his lady, by the late Daniel Clark; and in that case, whether I had any objection to appear as one of her witnesses. My answer to this was—"I have seen no such will of Mr. Clark's, but he has consulted me upon a will, of which he showed me a rough sketch." "Well, that will answer our purpose," said the General. "Very little, I believe; for if I was to give my testimony, I am inclined to think it would demolish all your pretensions." "Never mind," said the General, "I will have you subpœnaed." Upon this, I stated to him all that had occurred between Clark and myself on the subject, the opinion I had given him, and the determination which he did say he had taken, &c. &c. He retired and I never was subpœnaed. Before concluding, I must observe, that having once been of counsel for Mr. Relf, in the case of libel, brought by him against Myra's first husband, in the federal court, I felt a very natural delicacy, and declined to appear as a witness for him in the suit that has since made so much noise. As this is written in haste, I would not like it to meet the eye of the public, though every portion of it is most substantially true.

I remain, &c.,

MAZUREAU.

THE CASE OF GAINES *vs.* PATTERSON.

CHARLES PATTERSON.

Charles Patterson, for defendants—Is seventy years of age; came to New Orleans in 1805. I was sued in this court by Mrs. Gaines, for a house and lot on which I reside. Mrs. Gaines succeeded in that suit. According to the judgment of the court, that house and lot belong to her; but they told me that they would not take it from me.

I believe that Mrs. Gaines would give me a title to that property. If her creditors should attach or seize it, I suppose I should stand a suit. General Gaines and wife gave me in writing under their own hands, that they would not take the property from me, and that they would make my title good. The property has always been assessed as mine, and I have always paid the taxes on it. The decision of the court was that the property should be divided and sold. They talked of having it done. The court must do it. I cannot do it. I paid most of the costs, but they paid me again—that is, General and Mrs. Gaines. There was an understanding or agreement between General and Mrs. Gaines and myself, that they should pay the costs even should the suit be decided against me. They made the same offer to Judge Martin. I made the best effort in my power, and employed the best counsel to defeat Mrs. Gaines. At the trial of my cause with Gaines and wife, my counsel requested of Mrs. Gaines' counsel to be permitted to introduce the record from the Probate Court of New Orleans of all the proceedings of Mrs. Gaines in the prosecution of her rights in that court. Her counsel objected. I then applied to General and Mrs. Gaines. They replied to me to get all the evidence possible—the stronger the better. General Gaines remarked it would be more glorious to have it as strong as possible. I then caused the proceedings to be introduced. My case was tried in this court nine years ago. I had interviews with Mrs. Gaines previous to that trial and in reference to the same. My counsel was employed immediately before the record was obtained from the Probate Court. That counsel was Mr. John McHenry, now Judge of the First District Court of New Orleans. I do not know whether the said John McHenry held any consultation with counsel previously employed by me in the cause.

I did not consult with Chew and Relf, or their counsel, or with their or any other attorneys employed in the defence of the suit, and I do not know whether my counsel did. Mr. Isaac T. Preston was employed by me previously to Mr. McHenry. Mr. Brent, the old gentleman formerly a member of Congress from Louisiana, was employed to defend my interests before the Supreme Court in Washington. On the first trial Mr. Brent was paid for his services. Mr. Brent's son appeared on the second trial and he and Mr. May were paid by draft, for $100 each, on me, through Mr. May's brother, in this city. The amount has been reimbursed to me by General Gaines. I took out the record here, and sent it on, but do not recollect how. I was in possession of the record of the Probate Court, which I asked General Gaines permission to introduce when my trial came on. This transcript had been previously offered in evidence. It was agreed by General Gaines and wife, with me, that if I would go to trial on the merits of the case, they would indemnify me against all fees and costs, and that my property should not be taken, in case they succeeded in their suit. I was particularly requested by the General and Mrs. Gaines to use my best exertions, with the aid of the best counsel to make every defence in my power to this suit, and of which it was susceptible. I consider the agreement of General and Mrs. Gaines as an act of liberality on their part, growing out of a desire to come to a speedy trial with some one or more of the defendants on the merits of the case.

MRS. JULIA A. C. WOOD.

Mrs. Julia A. C. Wood, of New York, niece of Mr. Beverly Chew, one of the defendants—Went to New Orleans to be placed at school, under the care of her uncle. Knew Mr. Daniel Clark well. He lived with Mr. Relf in 1810, with whom my uncle and myself also resided. After my uncle's marriage, Clark lived with

us until he had completed his house on the Bayou Road. My uncle spent the summer with him, and I went there during my vacation. After this, Mr. Clark came to town, and dined with my uncle daily. I am certain he was not married. I was indebted to him for great kindness. He took special interest in my education—came for me frequently to the school, in his cabriolet, on Saturdays, to take me home; frequently heard me recite; selected books for me; took great interest in my studies; selected desireable books for me from his own library, which was an uncommonly large and good one; selected portions of poetry for me to commit to memory, and generally took great and constant interest in my education. He was, at the time, particularly attentive to my aunt, Miss Chew, and promised her that he would come on to Virginia, in a short time, to visit her. We looked for him in Virginia, whither we afterwards went. It was reported in New Orleans, at the time, that he was paying his addresses to my aunt, Miss Chew. He died in August following our departure from New Orleans. my uncle, Mr. Chew, was with us in Virginia at the time. Whilst In New Orleans, I saw Mr. Clark almost daily. He was very intimate with Mr. Chew and Mr. Relf, and when we left, he came aboard to take leave of my uncle, and brought flowers and books for my aunt. Mr. Clark's peculiar tone and style of character, were such, that he would have been one of the very last men on earth to marry clandestinely, or marry any woman, whose social position was not in all respects equal to his own, or whose personal character was not of the highest order. My intimacy was such, that if he had been married, he would, I think, have made it known to me.

MRS. CAROLINE M. STANNARD.

Mrs. Caroline M. Stannard., maiden name Caroline Matilda Chew, resides in Fredericksburg, Virginia: her husband was the late John Stannard, who died fifteen years ago. He was once a Colonel in the U. S. Army, and subsequently Marshal of the Chancery Court of Virginia. I am sister of Beverly Chew. (The witness confirms the statement of Mrs. Wood, about their going to New Orleans in 1810, and residing with Mr. Relf, with whom also lived Daniel Clark; and their subsequent removal to Chew's house.) I was as well acquainted with Daniel Clark as with a brother, (repeats the testimony of Mrs. Wood about their spending the summer with Clark on the Bayou Road, and their seeing him daily.) Clark was certainly not a married man. He gave me every proof of that, that a gentleman could give to a lady. I never heard it once suggested that he was a married man whilst I was in New Orleans, nor ever until I heard of Mrs. Gaines's suit. He was the last person I took leave of on board the vessel in which we left New Orleans. He was standing by me on the deck until the vessel was actually cast off from the wharf, and his last words to me were "God bless you! I hope to be with you in Virginia soon!"

The intimacy between Clark and my uncle continued uninterrupted till Clark's death. When that event occurred, my uncle was in Virginia with us. I was on such terms of intimacy with Mr. Clark, that I can certainly say he would have communicated to me the fact of his marriage, had he been in fact married. The nature of my acquaintance with him and his communications to me, necessarily precluded the possibility of his ever being married. He of course never intimated to me that he was or had been married. I have no doubt that if he had thought proper to marry privately, he would have communicated the fact to me and his intentions on the subject.

MRS. ANNE M. CALLENDAR.

Mrs. Anne M. Callendar, maiden name Smith, went to New Orleans forty years ago; resided with Judge Prevost; frequently saw Clark; heard, and believed that he was engaged to Miss Caton within three or four years of his death. He would have communicated to me the fact of his marriage if it had ever occurred.

Dr. John Barnes proves the authenticity of the following letter from Clark to his sister:

My Dear Sister: I have received your letter of 3d May, and thank you kindly for the pains you took in filling the toilette. I assure you that it would have given me infinite pleasure to have offered it either to Mrs. Clark, or any person likely to become Mrs. Clark; but this will not be the case for some time to come: for as long as I have the misfortune to be hampered with business, so long will I remain single, for fear of misfortune or accident. DANIEL CLARK.

Sarah Hulings. for defendants.—My maiden name was Cohen: my age is seventy-nine; I reside in Philadelphia; have lived here since 1804. I was married to the late Dr. Hulings. I went to New Orleans in July, 1791, and remained there until May, 1804. Knew Chew and Relf. I was intimately acquainted with Daniel Clark. In the summer, during the yellow fever, resided with him in the same house in the country. I have no hesitation in saying, he never was married, but was every where received as an unmarried man. My late husband was a merchant, and vice-consul of the United States at New Orleans, then a foreign port. Dr. Hulings was very intimate with Mr. Clark, loaned him money, having great confidence in him. Dr. Hulings acted as Mr. Clark's agent in Philadelphia, in the payment of money to Clark's mother. He was subsequently named by Mr. Clark, one of his executors. Clark would not have been married without telling us of it. When Clark was consul, Dr. Hulings discharged all the duties, and received the emoluments of the office.

COLONEL PHILLIP HICKEY.

Colonel Phillip Hickey, of East Baton Rouge, for defendants—Was seventy-one years of age the 17th of June last. Has resided in Louisiana sixty-two years. Was well acquainted with Daniel Clark. Being but seldom in New Orleans, never heard of Clark's connexion with Mrs. DeGrange. Knew a DeGrange; his first or given name I do not recollect. He resided in one of the houses belonging then to Don Andres, on the *Place des Armes*, and was a confectioner. I do not recollect any thing about Clark's having addressed a lady. I do not believe if Clark was a married man that he would address another lady. I have no interest in this suit or in any property held by Clark.

[Here follow two other depositions of Madames Despau and Caillavet, repeating substantially the evidence given by them before, with some slight alterations and additions, which will be noted in the Briefs of the Attornies.]

ECCLESIASTICAL RECORDS—MARRIAGE OF DEGRANGE AND ZULINE.

1. The license, in Spanish, of the Bishop to Jerome DeGrange to contract marriage with Maria Julia Car-

riere, native of this city, written in the formal style of old Sanish marital proceedings, and dated 3d Sept., 1794. Then follow the usual publication of the bans of marriage, according to the forms then in vogue. Previous to the fourth and last publication, DeGrange petitions the Bishop to dispense him from the fourth publication, as Lent is about to commence, which would postpone his marriage; and as he has embarked in the liquor business, he requires the assistance of his wife. The dispensation is granted, and the parties are regularly and formally married with all due pomp and ceremony. These documents all allege that no legal impediments exist to the marriage.

THE CHARGE OF BIGAMY AGAINST DEGRANGE.

A decree of the Vicar General, Thomas Hasset, states that it is reported that Jerome DeGrange, who married Marie Julia Carriere in 1794, was at that time married to Barbara Jeanbelle, who has arrived here from France; and that it was reported said DeGrange had another woman here and kept three wives, "as scandalous as it is opposed to the precepts of our Holy Mother Church;" an order is, therefore, made that De Grange be arrested and held subject to the penalties of the law, and that all persons who can give information on the subject may come forward,

Then follow the evidence in the case, the license of DeGrange, the depositions of the various witnesses who had sworn to DeGrange's capacity to marry: his being a legitimate son; to his performing Christian acts, hearing Mass and attending Holy sacrement; and that he was not engaged to any other woman.

Donna Barbara Jeanbelle, being examined on the alleged charge of bigamy against DeGrange, says that she has know him for sixteen years. She was never married to DeGrange. It was her intention to do so, but as he was going away, she changed her mind. She went to Philadelphia; while there DeGrange wrote her to come to this city to consummate the marriage, to which she did not consent. This was eleven years before. She saw him afterwards in Bordeaux, but they were both then married. She was married to Santiago Soumeylliat. M. Bernardy and his wife were witnesses.

Maria Yllar, being also sworn—Came from France to get a livelihood; knew DeGrange; it was he who told her to come to New Orleans. She knew before she left France that DeGrange was married in New Orleans.

Then comes the testimony of *Maria Zulime Carriere* herself, who stated, that about a year before, she had heard it stated in this city that her husband was married in the North, and in consequence, she wished to ascertain whether it was true or not, and she left this city for Philadelphia and New York, where she used every exertion to ascertain the truth of the report, and she learned only that he had courted a woman, when her father not consenting to the match, it did not take place, and she married another man shortly afterwards. She has heard in public, recently, that her husband was married to three women, but she does not believe it, and the report gives her no uneasiness, as she is satisfied it is not true.

Jerome DeGrange, also being sworn—Says that he first knew Barbara Janbel de Orsi in New York, eleven years ago, and afterwards in Philadelphia. He was never married to her, although he wished to do so, and had asked the consent of her father, but he refused it, as deponent was poor. He saw the said Donna Barbara in Bordeaux, by accident. He became acquainted with her husband, M. Soumeylliat, who attended deponent when sick, and he (deponent,) visited them afterwards. He also confirms the statement of Maria Yllar. He also states that taking it for granted that this charge would naturally fall, his wife being satisfied of his innocence, he had used no exertions to procure the necessary documents to establish his innocence.

Upon these proofs, the Vicar General orders that all proceedings against Jerome DeGrange be suspended, and that he be set at liberty.

Connected with these documents are several other instruments of proof.

1. The power of attorney of DeGrange to his wife, Marie Zulime Carriere, to attend to his affairs in his absence, he being about to go the Europe to see after some property which had been left him. This power is dated twenty-sixth of March, 1801.

2. A power of attorney, signed by all the Carrieres to Jerome DeGrange, to receive certain property which had been left them in France, dated twenty-sixth of March, 1801; then follows several acts of sale of slaves made by Marie Carriere, styling herself the agent and legitimate wife of "General Geronimo DeGrange."

The last of these acts is dated the sixth of November, 1801.

3. The will of Simphorien Caillavet, the husband of Rose Caillavet, in which he refers to a sum of money which had been remitted to him by Jerome DeGrange, for which DeGrange had received his power of attorney previous to his departure for France. In this will M. Caillavet prefers, as tutor of his children, F. J. Lebreton Dorgenois, to his wife.

SUIT OF ZULIME *vs.* J. DEGRANGE, FOR ALIMONY.

On November 6, 1805, Zuilme DeGrange sues her husband for alimony, in the County Court of New Orleans, alleging that she is his lawful wife. Jerome answers by a general denial. Another suit is brought against the name of DeGrange by Zulime, June 24, 1805

THE DESPAUS.

The defendants, to attack the credit and character of Madame Despau, the principal witness of complainant, and only witness of the marriage, produces the record of a suit brought against her by her husband for a separation. In her first petition, M. Despau alleges incompatibility of humor and several other reasons, "the relation of which would be too afflicting, which makes it necessary for him to pray for a separation from his wife, Maria Sophia Carriere." To which Madame Despau answers. Certain diffiulties then arise in regard to the disposition of Despau's property, the sale of which is enjoined by Madame Despau. On February 8, 1808, M. Despau files another petition, alleging that it is notoriously known, that said Sophia Carriere has several times deserted the bed and board of your petitioner, and even that she is now out of the territory, without the consent of her husband, and that she is leading a wandering and rambling life, without any regard for the principles of honor and decency, living in open adultry. He prays that her right shall be forfeited On February 12th, judgment was rendered by Hon. Joshua Lewis against Madame Despau, forfeiting her rights to the property acquired in the community.

WILL OF MARY CLARK.

The will of Mary Clark, mother of Danl. Clark, made Nov. 22, 1817, bequeaths the bulk of her property to her children. One-fourth part to her grand-daughter, Caroline Clark, (afterwards Barnes) "a natural daughter of her son, Daniel Clark;" also, the sum of $200 to her "grand-daughter Myra Clark, commonly called Myra Davis," another natural daughter of her son, Daniel Clark, and states "she would have left her equal with the other heirs, if she had not been otherwise provided for." Her executor was Joseph Reed, of Philadelphia, who appointed Chew and Relf as the agents of Mrs. Clark's estate in New Orleans. Then follow two acts of sale, one dated 16th May, 1808, of certain lots, by Danl. Clark to Jos. D. B. Bellechasse, (these are the lots that were assigned in trust for Myra.) On 4th June, 1833, at Mutanzas, Bellechasse conveys these lots to Wm. W. Whitney and Myra his wife. There is also an act of recession of Delacroix, made in 1820, of certain property to Samuel B. Davis for the minor Myra Clark.

MYRA CLARK'S PETITION FOR ALIMONY.

On June 24, 1817, Myra Clark, through S. B. Davis, her *curator ad litem*, petitions Hon. Joshua Lewis, alleging that she is the natural daughter of Daniel Clark, who made a will appointing Relf and Chew his executors, without making any provision for her support or the continuation of her education, which had been begun during the lifetime of her said father, in a genteel and expensive style. That her said father had frequently expressed his intention to his friends, of educating and supporting her in his own rank of life, and amply providing for her. That some instrument was executed in her favor by her father, which had not been shown her. She prays, therefore, for all the papers belonging to Clark, and for an allowance out of his estate." Defendants answer, denying that Myra is the child of Clark, averring his will of 1811 and the execution of it. They deny that Clark ever gave any instructions in regard to Myra, during his lifetime. On 19th February, 1818, on motion of Horatio Davis, this suit for alimony was discontinued.

MARRIAGE CONTRACT OF GEN. EDMUND PENDLETON GAINES AND MYRA CLARK WHITNEY.

This act was passed before W. Y. Lewis, notary public, on 7th May, 1840. It alleges their intention to enter forthwith into the bonds of matrimony; that there shall be a community of acquets and gains between them; that each shall be bound for the debts incurred before marriage.

The property of Gen. Gaines, brought into marriage consists of

3240 acres of land near Memphis, Tenn., estimated..	$47,000
5000 acres of East Florida land.....	50,000
5 lots in Memphis.....	5,000
7 slaves.....	5,000
	$107,000

Myra Clark Whitney brings into the marriage sundry squares and lots in Faubourg St. John, valued by her at $100,000; also her rights and claims as sole heir to the estate, effects, and credits of her deceased father, Daniel Clark, the value of which cannot be ascertained, as it is in litigation; she also provides that her property shall be considered paraphernal, and she retains the right of alienating or encumbering the same whenever it shall be necessary; that she has three children by her former husband; and that he has two children by his former wife. She then provides that in consideration of the expense he will incur in prosecuting her claims and out of affection to him, she makes a donation *inter vivos* out of her property, to be recovered from the succession of her father, of $100,000—this donation to revert to Mrs. Gaines in case of the General's death without children by this marriage. There are other immaterial clauses in this marriage settlement.

PROBATE PROCEEDINGS OF CLARK'S SUCCESSION.

The Probate proceedings in the matter of the will of Danl. Clark are very voluminous, but contains few matters of much bearing on the case. On 3d March, Chew and Relf set forth in a petition to the District Court, that owing to the general depression of affairs they could not realize from Clark's estate enough to pay his debts, if his property was forced into market and sold for cash; they, therefore, pray for a respite and a meeting of the creditors of the estate. They annex a schedule of Clark's debts and assets. The meeting of creditors accordingly took place, and the respite was granted.

ANSWER OF CAROLINE BARNES TO MRS. GAINES' BILL.

Among the other defendants in this case was Caroline Clark Barnes, born of Zulime DeGrange, and her husband, whose answer contains points and averments not set forth in the general or separate answers of the other defendants: Caroline alleges the verity of the will of 1811, and her own rights under the will of Mary Clark, the mother and devizee of Daniel Clark. That Daniel Clark being induced to believe that Myra was his illegitimate daughter, had made some provision for her. That about two months before his death, he did meditate making a will to provide for Myra—which will he probably showed to his intimate friends; that she, Caroline, was acknowledged as Clark's child, educated at his expense, bore his name, and was looked upon at school as his prospective heiress; she was so treated by his mother. For Myra, provision was made by property assigned to Samuel B. Davis and others, to the amount of several hundred thousand dollars. This fact vindicates his (Clark's) memory from the imputation of fraudulently conveying several hundred thousand dollars worth of property in secret and confidential discretionary trust for an illegitimate child, and tantalizing an aged mother with a residuary legacy of empty boxes. Such report of Clark's character the respondent avers is fictitious and unjust. In relation to the projected will in favor of Myra, Clark consulted an eminent lawyer, (here follows a statement of his conference with Mazureau, conforming with that already given by that gentleman.) The fact that Clark left such outstanding trust deed surviving him, is almost proof positive that he did as advised. The improbability that Judge Pitot should have been cognizant of the will of 1813, is then dwelt upon, he being the Judge before whom the will of 1811 was probated. Reference is then made to the unsuccessful efforts in 1834 to have probated the will of 1813.

In respect to the averments of plaintiff, Myra, that her mother was the lawful wife of Daniel Clark, and that the plaintiff is the only legitimate child of that marriage, respondents say that a more exaggerated fiction was never wrought up from a tissue of circumstances which comported so little with such conclu-

sions, and which respondent is too painfully conscious can admit of no apology, no explanation, at which morality must not blush, and these defendants especially deplore. The marriage of Zulime to DeGrange is then noted, and their separation in 1801. That Clark's illicit intimacy with her then commenced, of which intimacy respondent, Caroline, was the acknowledged issue, and Myra a *reputed* issue, though respondent (Caroline) has been frequently assured by her mother, that she was the only child of Daniel Clark, and repeats now that Clark was imposed upon and deceived into the belief that Myra was his child, when she was, in fact, the child of another man. This adultrous connexion continued till 1804, when Clark separated from her, and, in 1807, became the accepted lover of Miss Caton. The marriage of Zulime and Gardette is then referred to. All these facts respondent would most gladly have suffered to repose in oblivion, had not a perverted imagination attempted, from such humiliating circumstances, to work out a marriage of Mrs. DeGrange to Clark, and the consequent legitimacy of Myra, to the subversion of the established rights of this defendant, (Caroline,) and with an accumulation of dishonor and reproach upon both her parents. This respondent never heard herself denominated Caroline DeGrange, until so styled by complainant. The defendant has heard from her mother her repeated expressions of sorrow and regret, that she had not succeeded in becoming the wife of said Daniel Clark.

The answer contains many other averments. It avers that if there was a will of 1813, such as is described by complainant, it would be null and void and could not convey any property to Myra. Respondent avers that the assignments, in secret trust, made by Clark in his life for the benefit of Myra, were illegal as against the mother of Daniel Clark; and defendant claims their portion of the same as one of the heirs of Mary Clark. They conclude by denying that during the time the said Caroline was at the boarding school, and after her marriage, the said Zulime née Carrière frequently visited her and repeatedly assured her that she, Caroline, was the only daughter of the said Daniel Clark, and therefore the said defandants assert and maintain that if the said alleged marriage between Clark and Zulime ever took place, as the complainants have averred, and it should be regarded of any validity, that, in that case, the said Caroline Clark Barnes would be and must be regarded, as the legitimate child of that marriage, for if even born before wedlock, she would be, by the laws of Louisiana, legitimated by the subsequent marriage of her parents, and the acknowledgment of the said Clark that she was his child, and therefore would be entitled to all the rights and privileges of legitimate, legal heirship and inheritance. Signed, John Barnes, Caroline Clark Barnes.

LETTERS OFFERED BY DEFENDANTS.

LETTERS FROM DANIEL CLARK TO DANIEL COXE.

No. 1—Articles of partnership or agreement between Coxe and Clarke.

2—Wilmington, 22d July, 1802—a business letter.

3—Washington, 31st January, 1807. This letter refers to certain propositions made by Clark to Governor Claiborne, and develops the following interesting fact: "When I returned from Europe, in the begining of 1803, I found the deposit at New Orleans suspended, and the French making immediate preparations to take possession of Louisiana, which I believed would be attended with ruinous consequences to the United States I waited on General Wilkinson and Governor Claiborne, separately, to propose to them to take possession of New Orleans, if they thought the measure would be approved of by the executive, and assured them of a certainty of success, in consequence of the proffered assistance of the people of the country. Claiborne was doubtful whether the thing would be approved of, but asked twenty-four hours to consider of it. I told him the business would infallibly be disavowed by the Executive; but that it would afford it an opportunity of availing itself of the circumstance, should it afterwaads be found expedient. At the end of twenty-four hours, I waited again on Claiborne for his answer, when he asked what were the means which could be provided for the support of the people engaged in the expidition. This I pointed out, by engaging with my friends to furnish, in provisions and money, a sum of $150,000, to be applied under the direction of a council, to the payment of all expenses. Claibore then said that if the expedition failed, I had resources, but he would de ruined. I asked him, if that objection was removed, he would eoter heartily into the measure. He assured me he would. I then proposed to him to put my whole estate in trust, to be equally divided between him and me, in case the expedition failed. He then retracted, told me he was afraid of consequences, and we parted. This took place in 1803, after which I never saw Claibore until the 18th December of the same year, when he arrived to take possession of Orleans. My letters to him in the intermediate time, were all forwarded to Government, so that no other communication, either verbal or written, was made but what Government was in possession of. It follows, therefore, that I never made Claiborne a proposition for anything to be done for the benefit of Spain. * * There is, therefore, some other reason, (of the opposition of Claiborne to him,) and the true one is, my violent opposition and outcry against Claiborne's imbecile measures. But it suits better to give a reason which is injurious to me, than bring forward the real one."

4—Letter from Clark to Coxe, New Orleans, October 8, 1803—Refers to success of certain joint land purchases; of his intention to buy 104,000 acres of land on the Ouachita, where he hopes to establish a large settlement; also, 30,000 acres in the Government of Baton Rouge, between Iberville river and the boundary line; 5000 acres at junction of Vermillion and Teche; 3200 acres on both sides of the Nez Coupée, in Opelousas; also, a plantation of 800 acres, seven leagues below New Orleans. He advises Coxe never to part with these lands; refers to a purchase made by his uncle, when he settled him in 1794, of a place be called a desert, for $400, now worth $20,000. He develops other land speculations of a very grand and exteosive character

5—New Orleans, 13th July, 1803—Requestiog him to forward three letters enclosed to Paris, and says, "we have just heard, *via*. Jamaica, that war is declared."

6—New Orleans, 18th Feb., 1804—Referring to business affairs. Refers in very contemptuous terms to Gen. Wilkinson, and to his (Clark's) neglect by the Government, in the disposition of the offices, which he does not regret, as he would accept nothing; he wants somebody here in the place of Clairborne, who is universally despised; he has literally done nothing but disgust the people by his want of energy and decision. We have not even been called on to take the oath of allegiance. All the forms and places instituted by the Prefect, (á la Francaise) are preserved; and this will, in the end, give the lower classes a hankering after the French Government. Through his fault, decided French and American parties are formed. All public business is (in statue quo) as when he came; the very public records, shut by the prefect were only begun to be inventoried lately, and are not yet accessible; the poor creature is dirty, slovenly, a procrastinator, has no knowledge of the world, and out of the gates of New Orleans the American government is unknown by any act whatever; and, if we were not a very quiet people, such supineness, irresolution, and want of action, would have already produced bad consequences. The prefect, who is a turbulent man, has more than once directly insulted the commissioners, and Clairborne puts up with it. He has been writing to the government that all is quiet, while two riots, threatening the town's safety, took place in a ball room where he was present, and his conduct on the occasions has brought him into merited contempt, even with his own friends. In short, if he is continued here, the Government itself will be despised. I wish you to keep these things to yourself, and not mention my name. It were to be wished that Dallas would come out governor. He is a gentleman, and a man of the world, and I make no doubt, that the people would shortly, by his endeavors, be attached to the United States; and I wish you to let him know my opinion. Dayton wrote to me lately, and seems hurt that I have not had an offer of some thing to my wish. The only thing I want, is to be left quiet, as I am determined never to hold any office whatever. But, I confess to you, I am hurt at no notice being taken of the services I have rendered, which deserved, at least, a remembrance by a *complimentary epistle*, on the expiration of my consulship. As no notice has been taken of me nor my representations, and as my functions have expired, I shall not write a line to any member of the Government. I am getting my correspondence with it copied, and when finished, will send it to you, that you may judge what I have done and attempted for it.

Our commissioners have hitherto done nothing, with respect to Florida; they, however, have orders to enter a protest, if it is not delivered up to them, as far East as the river Perdido, and when all the other business is done, I suppose they will comply with their orders, and leave matters so. As soon as the estimate of the public buildings is finished, which now detains the French and Spanish commissioners, I suppose the latter will withdraw their troops, and the business of the American commissioners will then be over. They have yet to receive a part of the archives, and some public buildings, which are still occupied by the troops and the stores of the King of Spain. The Spaniards and Ameri-

cans are on the best possible terms. It is not so with the Prefect and his party, with respect to us; they are conjuring up all possible hatred and opposition to us, with the Creoles, and through the incapacity of the Governor, are but too successful.

In this same letter he refers to the arrival of Edward Livingston, whose manners he says are pleasing. He wishes to be remembered to his family.

7—Balize, March 26, 1806—Noting his arrival, stating that it would probably rejoice Chew and Relf.

8—New Orleans, April 3, 1806—Referring entirely to business and shipping.

9—New Orleans, April 17, 1806—Refers to profits of a shipment from Newburg, and to his intention to purchase certain sugar estates, and many other large speculations.

10—Refers to certain losses of Coxe—Advises him to be particular in insuring all shipments. He speaks of selling lands and lots held jointly, except the Florida lands, to pay off their debts; suggests that they should get assistance from Mr. Bird.

11—New Orleans, June 11, 1806—Business affairs. Hopes that Chew had arrived in Europe, as he looks to him for relief; refers to other commercial affairs in Mexico and elsewhere.

12—New Orleans, June 18, 1806—Refers to commercial affairs.

13—New Orleans, June 26, 1806—After various allusions to business affairs, says he is busy ransacking old papers, to be ready to answer questions respecting Louisiana, (when he visits the North,) and to settle land titles.

14—New Orleans, August 7, 1806—Speak of certain land purchases, and states that the Secretary of the Territory, Mr. Graham, has written to Mr. Watkins that our affairs with Spain will be settled, and the Florida speculations would fail. Requests Coxe to ascertain the fact, from the *friend* who can inform him.

15—New Orleans, 4th Sept., 1806—A strongly written letter, stating that he has no money or credit in England. "Damn the eclat," (he says of a certain shipment,) "when we are to pay for it with honor and vexation." In this letter he says. "You are much mistaken in your judgment of Relf, who is, in my opinion, not only a good merchant, but possessed of great capacity, and fully equal to any thing which can be entrusted to him."

16—New Orleans, 12th Sept., 1806—Writes of selling all his lands, bank stock, &c. In this he states, "It is said here that the President is resolved on risking war with Spain for the Floridas, or the part of them claimed by us."

17—Washington, 6th Dec., 1806.—Writes of having no news about his trunks; says that he is informed that the claim to East Florida is given up, in consequence of which he feels at ease about his lands. He says, too, that a bill is now before the House to suspend the non importation act, and although the democrats, ashamed of their conduct, kick a little, and flounce about repealing or suspending the act, yet it must go down." Further on, he says: This is just now carried—101 to 5.

18—Washington, 25th Dec., 1806—Writes what articles Coxe should ship for New Orleans. He states: "The news from Ohio states that thirteen or fifteen of Burr's boat were seized at Marietta, while he himself was about the same time acquitted on an indictment in Kentucky. Refers to an anonymous letter, in which he (Clark) is mentioned as the chief broker and paymaster to Burr; and jocosely asks Coxe if he is aware where the funds to draw upon are.

19—Baltimore, 27th Dec., 1806—States that he has come to Baltimore to see about certain Mexican licenses.

20—Washington, 24th February, 1807—States that Relf was more frightened about their affairs than he ought to have been; refers to a trick of Burr, or some of his adherents, to raise money by pretending that they were authorized to draw on them, Clark and Coxe.

21—Baltimore, 12th March, 1807—Refers to certain trunks, and directs a deposition to be made of certain packages; states that a prodigious emigration will shortly take place from this State, (Maryland,) and Virginia: he will be in Philadelphia in ten days: and speaks of selling his estates and going to Europe.

22—New Orleans, 29th May, 1809—States that he is straining every nerve to remit tobacco.

23—Houma Plantation, 12th June, 1807—This is the duel letter. As it is a curious affair we give it entire:

My Dear Friend—When I wrote you last, I mentioned that I was on the point of setting off for Natchez, and you must naturally conclude that I have had time enough to get there ere now. My departure from the city was caused by other reasons than business, and I shall now detail them.

Governor Claiborne, stung to the quick by the few words I said in Congress respecting his conduct to the militia, and driven to despair by the flattering reception I met with on arrival, since when the most unbounded testimonies of affection have been heaped on me, thought fit, after some preliminary correspondence, to challenge me. To this step I believe him to have been spurred by one Gurley Attorney General, who has always hated me for my contemptuous treatment of him, and who preferred the Governor risking his person in a quarrel with me rather than put his own in danger. We set off, therefore, for Manchac, in order to be out of the Governor's jurisdiction, and, immediately on crossing the Iberville, we fought and decided our quarrel, on Monday, the 8th, at one in the afternoon. The aforesaid Gurley accompanied the Governor as his friend; Mr. Keene, a gentleman of the bar, and an intimate friend, was mine. We fired almost at the same instant, at ten paces, and the Governor fell, shot through the thigh, and with a most severe contusion on the other. I have received no injury. I look upon this business as settled, and will return to Orleans in three or four days. I keep away from it merely to avoid the congratulations and exultation of the public on the occasion. You will, doubtless, have some account of the affair from thence, and, on my return, I will forward you the correspondence which took place previous to it. Wherever I have appeared since then, the inhabitants have honored me with the proofs of a most affectionate attachment, some bitter reproaches that I should have *dared* to risk a life, which, they think, ought to be reserved for them; and the pain of his wound is not the only smart my unfortunate adversary will suffer under. I have not written a line to Orleans since the affair, but my second will reach the city this morning, and should any misrepresentation of facts take place, he will correct it.

On my return to the city, I shall determine, without delay, to what I shall do during the summer, and will advise you. Let my parents know the fortunate result of this business, and that it will end here.

In a postscript, he adds that the secret of the intended duel leaked out in New Orleans, from the Governor's friends, who mentioned it publicly after the Governor's departure. He accordingly left thirty six hours before the appointed time was issued by the sheriff, but got across to Iberville before he could be arrested. He refers to his great popularity from this affair, he states that everywhere the sympathies of the people were on his side.

24—New Orleans, 24th July, 1807—Refers to shipments of cotton—says, "our political horizon looks cloudy, and wish we had still less property at sea than we have afloat." Refers to the affair of the Chesapeake as the commencement of difficulties with England; blames Coxe for neglecting to insure, and threatens some violent extremity if he does not amend his conduct in that respect; refers to his remittances to Coxe, amounting to $193,000 and speaks of not returning to Congress.

25—New Orleans, 6th August, 1807—Writes of certain arrangements to import goods from Philadelphia to New Orleans. In this letter he says that "nothing but immediate war can injure us"—"and that would not ruin us." He adds, he has heard of the proceedings of Commodore Douglas, off Norfolk, to 4th July.

26—Pointe La Hache, below New Orleans, 7th Sept., 1807—Refers to a severe storm; expresses apprehensions of its damages in New Orleans; thinks that his absence is looked upon as a real loss by the people, &c., &c.

27—Charleston, 28th September, 1807—The Comet, on which he sailed from New Orleans, is compelled to put into Charleston, on account of a leak; they were boarded off the Tortugas, and rigorously overhauled by the British sloop of war Elk; the Comet cleared from Amsterdam via Philadelphia, on account of the drawback.

28—Washington, Dec. 15th, 1807—Requests an enclosed letter to be thrown into the Postoffice, as he desires it to be kept a secret from whom and whence it comes. He then refers to the Napoleon decree against all ships trading with England. He derived this information from the President, who acknowledged that he had not got it from the highest sources. England, the President thinks, will follow it up with something similar. He desires it to be kept a secret, as it might injure the sale of certain insurance stock belonging to their mutual friend, Mr. Goldsmith.

29—Washington, Dec. 22d, 1807—Refers to the passage of the embargo act at 11 o'clock last night. The measure was recommended by the President, who communicated the Napoleon orders, and the answer of the French Chief Justice, but none of Armstrong's communications. The measure was strongly condemned by Randolph, Dana, Livermore, Quincy and others. He adds, "You will now, I hope, acknowledge I have judged the administration right."

30—Washington, Dec 29th 1807 Complains of having to pay $1 37 postage for two letters from New Orleans. Thinks that England will not look on the embargo as cooly as Coxe calculates; retails some gossip about a vain young man named Hamilton, and a Miss Lea, for the confidential ear of Mrs. Coxe. Thinks that the President will force war upon the people through the intrigues of the base and unprincipal men around him, and through a fear of France.

31—Washington, January 1st, 1808—Refers to attempt to expel John Smith of the Senate; thinks that there will be a war with England or France; says that no foreign vessel can take a cargo, or depart with anything else on board, than what she had when the embargo was notified to her; thinks that England will make a sweep of our commerce; some members are talking about moving the Capitol to Philadelphia.

32—A private letter, 3d June—He refers to a circumstance occurring between Mr. Randolph and Wilkinson; the arrival of Mr Rose at Norfolk, and the receipt of unpleasant despatches from France, leaving no alternative between war or an alliance with them.

33—Washington, Jan. 4th, 1808—Says that the President has taken a decided stand; he will think all his points gained if Great Britain can be pushed on to commit hostilities and declare war. Says that he made a suggestion to Gallatin that the probable designs of the Spaniards were to seize our boats as they passed Baton Rouge (on account of the embargo)—to which Gallatin replied, "Then we will dispossess them."

At the conclusion of this letter, occurs the following, which may be considered as an allusion to his affair with Miss Caton:

"I am happy to learn that so much importance is attached to my visit to Annapolis; but it is, perhaps, unfortunate that the conjectures in my favor are so devoid of foundation."

34---Washington, Jan. 18th, 1808---Says it is supposed that Mr. Rose (the British Envoy) had entered on business with Mr Madison.

35---Washington, Jan. 24th, 1808---States that Rose will not treat until the President's proclamation, interdicting our ports to the British ships, is done away. Phe President says Great Britain must fall. He thinks that the British will maintain their ground, as they have nothing to lose by treating with us. He refers to the efforts of the Administration and Wilkinson's friends to expel him from the house, for an affair in regard to a craft drawn by a Mr. Ogden. (The affair is not very clear.)

36---Washington, Jan. 27th, 1808---Refers to correspondence with Capt. Truxton, and to Relf's publication in his defenee, (in the quarrel with Wilkinson,) as calculated to injure him. Affairs still remain uncertain with England.

37---Washington, Jan. 31st, 1808---States that he has seen Erskine and Rose; and the President's proclamation is still a serious barrier to the settlement of our difficulties with England. He and Mr. Bayard intend to watch the progress of the negotiation, and if they can learn that affairs are likely to be amicably terminated, they propose advising him, (Coxe) *so that he can speculate* in the different insurance stocks, which are now low.

38---Washington, Feb. 1st, 1808---Refer to news of a rupture between England and Russia, and the unsettled state of our negotiation with the English Envoy. The latter wishes us to persist in the embargo.

39---Washington, Feb. 4th, 1808---Refers to certain communications made that day, relative to certain reports made by Clark in 1803, of the designs of Spain on Kentucky, and the attempt of Sloane to have the government removed to Philadelphia.

40---Washington, Feb. 6th, 1808---Wishes to know what steps will be taken by France in regard to our commerce.

41---Washington, Feb. 9th, 1808---Refers to a draft which he wishes sent to New Orleans to be paid.

42---Washington, Sunday, Feb. 14th, 1808---(On his return from Annapolis Court). That the President had sent a message on our foreign relations, and that he will recommend an adjournment in June; thinks the embargo will be continued until then, and that England will take some desperate measures with respeet to us.

43---Washington, Feb. 16th, 1808---Says that the negotiations of Rose are coming to a point.

44---Feb. 18th, 1808---The negotiations with Rose are to be suspended, and he will return home; refers to a letter of his to Wilkinson.

45---Washington, Feb. 21st, 1808---States that Erskine has informed our government that the British Government would look upon the non-importation act as a war measure and act accordingly.

46---Washington, March 17th, 1808---Requests Coxe to get the Felicity ready for sea, as he will probably step into her and set off for New Orleans. This is *entre nous.*

47---Washington, April 15th, 1808---Refers to the attacks of his enemies in the Aurora. "I am now exposed to shame, insult, and disgrace," Congress will not break up as soon as expected, and that the embargo will continue until a change of measures takes place in Europe.

48---Washington, Feb. 22d, 1808---Negotiation of Rose now supposed to be resumed.

49---New Orleans, 11th July, 1808---Encloses a letter from Col. John Clay, commanding 2d Regiment Militia, in New Orleans, confirming his (Clark's) statements about his visit to Wilkinson's camp.

50---New Orleans, 23d July, 1808---Refers to Saludo's answer, sent by Coxe, which he considers a compliment to him, and a cruel mortification to Wilkinson's friends. Refers to shipments and other business matters.

51---New Orleans, 22d August---Sees now that the embargo would be a thorn in their sides, and their purchases have injured them (Coxe & Clark.) Refers to embarrassment, and the necessity of selling valuable estates.

52---New Orleans, 12th September, 1808---Speaks with joy of a letter from Coxe, received by Relf, not asking for remittances.

53---New Orleans, 31st October, 1808---Writes about a vessel called the Comet. He says: "I am glad to learn that the tide has turned against the Democrats, and hope they will be completely overwhelmed. It is, I hope, the first step to a good and more energetic form of government, without the help of low intrigues, and sacrifice of principle to popularity. I rejoice, from my soul, at everything which militates against the French arms, and hope that Junot's capture will be followed by that of the destruction of every army which the tyrant of Europe has now out, or may in future send out of France."

54---New Orleans, 8th November, 1808---Refers to accounts, remittances, &c.; encloses a copy of a letter from Wilkinson.

55---New Orleans, 24th October, 1808---Refers to sales of certain tracts of land. He says: "I am happy to hear that the Spaniards and Federalists continue to be successful,"

56---New Orleans, 1st May, 1809---Refers to difficulties with Turner, and his intention to proceed to Natchez, to make his collections. Requests that Coxe will assist Mr. Livingston in a publication he has undertaken for him (Clark.) General Folch, he adds, is now here. It is generally supposed that the object of our troops here is to take possession of Florida.

57---New Orleans, 8th May, 1809---Recurs to the difficulties in bringing Turner to a settlement encloses an original letter from Wilkinson to General Adair; refers to sales of property, which he thinks will be enough to pay their debts; explains that he purchased the lots on the bayou with the expectation that the Government would open the Canal Carondelet, and thereby they would become quite valuable---but will buy no more property, &c.

58---New Orleans, May 14th, 1809---Indicates great embarrassments; the necessity of going out to collect all debts due them.

59---New Orleans, May 25th, 1808---Writes about buying slaves in Virginia on one and two years credit, on security of some well known merchant; thinks they might be sold to great advantage here.

60---New Orleans, December 19th, 1809---Expresses alarm on account of the failure of the negotiation with Mr. Jackson; refers to the claims of the heirs of a Mr. Corcoran; orders certain things for his sugar plantation; speaks of closing our concern with Chew and Relf.

61---New Orleans, May 3d, 1810---Expresses his joy at the probability of the release of certain property under sequestration is Denmark; refers to the departure of Relf for Philadelphia, and advises Coxe to recommend him to every merchant in the Union.

62---New Orleans, June 4th, 1810---Says that he flatters himself Wilkinson's reign is over, and that his power to injure him (Clark) is ended, etc., etc.

63---New Orleans, February 15th, 1811---Refers to his expected bargain with General Hampton for the sale of the Houmas, and the joy he will experience in remitting to Coxe. "My soul," he says, "is harrowed up, and my mind so tortured with fear and apprehension since the receipt of yours of the 2d ult., by Chew & Relf, that nature cannot long support what I undergo. My body is so affected by what I suffer in mind, that unless Providence should relieve me I must sink under it."

64---New Orleans, March 1st, 1811---Has received Cox's letter of 18th January, and feels so distracted since it came to hand, as to be almost incapable of answering it. Has completed sale of the Houmas to Gen. Hampton for $170,000. Says the failures in New York have been dreadfully felt here. Five or six large, and twice that number of small houses have failed. The Branch Bank, by reducing its accommodations, has put the whole town on the very verge of bankruptcy.

65---New Orleans, March 21st, 1811---Writes very despondingly of his sacrifice to relieve Coxe.

66---New Orleans, March 15, 1811---Writes in the most gloomy style of their prospects; justifies Coxe's impatience and reproaches, on account of his great distress, and concludes in the following desperate language: "One consideration only weighs down my soul in agony and despair: my mother and her family in a foreign country without friends or protectors; for God's sake entreat our friends to provide for them until I can take measures to do so, which will be ere long. I may myself become an outcast, but with a little time and management there will be enough to pay all our debts. It would be ruinous to have our landed property brought to the hammer, and sold for cash.

67---New Orleans, March 22, 1811---He cannot describe the sensation he feels in receiving a letter from him, Coxe, and his deep regrets that he cannot relieve him; trusts that there will be property enough to pay all; begs Coxe to continue to assist his family.

68---New Orleans, April 26, 1811---Desires to visit Coxe to make a statement of their affairs; is seeking relief from the branch of the U. S. Bank.

69---Bayou St. John, near New Orleans, Sept. 6, 1811---Arrived here after a passage from the North to the Balize, of 41 days. Is well, but worn out with anxiety.

70---New Orleans, Sept. 13, 1811---Refers to embarrassments of Chew and Relf; speaks of other losses, and of his intention to go out into the country to collect. The city is in a dreadful state, on account of sickness, and consequent stagnation of business.

71---Bayou Road, October 18, 1811---Would give his heart's blood to relieve him, Coxe, but cannot raise a cent; is not able to go into the country, and the country people won't come to town.

72---New Orleans, Nov. 30, 1811---Clark has just returned from a tour in the Mississippi territory; feels sensibly Coxe's wants and deeply regrets he cannot relieve him. The President's message just received, and caused great sensation; expects some facilities from the Louisiana Bank when Relf is elected Director.

73---Capes of Delaware, July 15, 1811---Is going to sea; will remit him $25,000 as soon as he gets to New Orleans.

74---New Orleans, Jan. 13, 1812---Is about to proceed to Houmas to see Gen. Hampton about his note.

75---New Orleans, June 15, 1812---Explains why he has not remitted to Coxe, as all his means have been used up to serve Chew and Relf. Would sacrifice all that he has to save Coxe, and then fly away, to escape the hell he has lived in for the last eighteen months.

76---New Orleans, Sept. 8, 1812---Explains more fully his ad-advances to Chew and Relf, and says that on Relf's return it is his wish to come to a final understanding with them.

(There is also a letter to Chew and Relf, placed somewhat out of order, which is important, bearing date New York, August 13, 1802, in which Clark states that he is on his way to England, and will sail on Tuesday for London. Requests them to take care of certain trunks of papers, and to push on remittances. He says, he will return from England direct to Orleans.)

77---Clark to Coxe---New Orleans, June 29, 1812. A long letter explaining his embarrassments, and the causes of his not remitting to Coxe. In this letter he speaks of the erroneous statement of Relf, upon which he grounded his settlement with Coxe; of losses by a failure in Vera Cruz. He annexes a statement of sums received, and says he has only been able to maintain himself through Relf's influence in the Louisiana Bank, and by contracting new engagements to pay the old ones. This will show that he does not sleep on a bed of roses. Refers to the fine inheritance left him near Natchez by his friend Wilkins, which he had to sacrfice to "prevent an exposure which would have effectually ruined us." Says that he would have had a large sum of money from Wilkins's estate, if it had not been plundered by Mi-

nor, whom he threatens to expose. If he does not reimburse him $40,000, he says, "I will set off shortly for Natchez and if I cannot obtain legal redress, will challenge him, and if he refuses to fight me, will publicly horsewhip him at the door of the bank of which he is president. You may therefore expect something very serious to take place. He will leave everything in which Coxe has an interest in the hands of Chew and Relf; the property he has intended, he will make over in trust for his mother and family, as it would be unjust to leave them exposed in a foreign land unprotected. Refers to Relf's embarrassments being greater than was contemplated. Recurs again, in terms of passionate despair, to his efforts to assist Coxe, exclaiming, "Great God, what can I do that I have not done!" Refers to the hopelessness of seeing their debtors. Offers, if Coxe will give him $25,000, to transfer to him everything in the schedule of their joint property, if he (Coxe) will undertake to free him from all demands. Refers to the decline in cotton as increasing their difficulties; and concludes as follows:

"I have now one word to say on a subject which I hope will be the last time that it will be necessary to touch upon it. You tell me in a late letter, that I have lost one estate by sycophants, and express your hope that I will not endanger another by them. Nobody better than you ought to know how mortifying and injurious to my feelings such remarks must be, that they can be attended with no good, and may, perhaps, be thought to spring from an idea of great superiority of mind and intellect, on the part of the adviser, to a kind of humble dependent, or debased slave, such as you may, perhaps, in imagination, figure yourself, I may or ought to be to you. I madden with indignation, when I ask myself what can authorize this liberty to be taken with me, and I only recover my reason on recollecting the habit you have acquired of saying mortifying things at the expense of others, perhaps, without sufficient reflection; and in the intimacy that subsisted between us, I have on more than one occasion suggested to you the necessity of paying more regard to other people's feelings. If, therefore, you set the smallest value on my friendship, I wish you to avoid the subject in future, and not lacerate my mind afresh, even by an explanation or allusion to it."

78—Clark to Coxe, New Orleans, 20th Dec., 1811—Says: No mail, and must remain in ignorance of the effect of the Duke of Busano's letter. Will attend to paying taxes on the Marquis de Gasa Grujo's property. Trust to be able to make remittances.

79—Clark to Coxe, New Orleans, 19th Jan., 1813—Refers to the difficulty of realizing debts, on account of the war, and the destruction of the crops by the hurricane.

80—Coxe to Clark, Philadelphia, August 26th, 1803—Acknowledging Clark's letters of 12th, 13th, and 18th ult. Rejoices in his prompt resolution to make a bold strike at lands, which he considers the fairest chance in the world of making a fortune. Sends money to buy more lands.

FAMILY LETTERS.

81—From A. Anderson to Daniel Clark—Germantown, May 27, 1803. Clark's brother writes of family affairs; of the kindness of Coxe.

82—Jane Green, Clark's sister, to Clark—Liverpool, May 3, 1806. Referring to her share of fitting up "your truly elegant toilette," adding "the idea of its being intended for Mrs. D. Clark got strong possession of my mind, and so much do I wish to see one bear that name worthy of you, that nothing, in my opinion, could be too good to trust in it;" says, "it has been exhibited in London as a master piece of elegance and fashion." Refers to her sister Ann having received Clark's present to her. After alluding to domestic affairs, this letter concludes: "why will you be for ever toiling; surely you should now set down and enjoy life. Let me know if my suspicions are right about the destination of the toilette; if they are, may you be as happy in your choice as is your truly affectionate sister. JANE GREEN."

83—Mary Clark to her son Daniel—Germantown, March 30, 1803. Refers to the receipt of a letter from him, from Kingston, and their fears for him in the different voyages he had to make during the winter. Refers to Mr Coxe's conduct to them and certain family affairs, and says: "we want for nothing but the presence of him who has so largely contributed to our ease and comfort—acknowledges the receipt of plate," &c., &c.

84—Mary Clark to her son Daniel—Germantown, July 3, 1803. Refers to a letter from Clark, received yesterday. "Your absence," she says, "is a thing you can't avoid; therefore I must be content until you can come with safety to yourself;" refers to the disorder of his plantation during his absence, says that "It is six weeks since we heard from Liverpool; that they (meaning Clark's sister's family) were all well," &c., and they regret much your leaving them so soon." [All these letters of Clark's relations are couched in the most affectionate and grateful expressions towards him, and ascribe all their happiness to his kindness and liberality.]

85—Jane Clark to Daniel Clark, Germantown, August 11, 1803, —About family affairs.

86—Jane Clark to Daniel Clark, Rocky Mills, near Richmond, Jan. 13, 1803—About private affairs.

87—From the same, April 20, 1803—Same purport.

88—A letter, not signed, by a member of his mother's family—Germantown, Aug. 26, 1803—About family matters.

89—Anderson to Clark, Germantown, 29th August, 1803. A family letter. Refers to the rage of the fever in New York, and several family matters.

90—Coxe to Mrs. Jane Clark, Philadelphia, October 10th, 1811, relative to the amnesty.

91—Hulings to Clark, Philadelphia, January 1st, 1812—About domestic affairs.

92—Hulings to Clark, May 4th, 1813—Reminds him of the necessity of remitting funds to his mother, and speaks of the gloomy state of political affairs.

93—Hulings to Clark, Philadelphia, January 14th, 1813—Acknowledging Clark's favor of December 8th, including bills for $300; speaks of derangements in Clark's family, and the necessity of remittance. Another letter to the same purport, January 6th, 1812.

94—Kimball to Clark, August 27th, 1803—About a small sum due him by Chew and Relf.

95—A. Anderson to Clark, Germantown, 6th Dec., 1803—About family concerns.

PUBLIC AND OFFICIAL LETTERS.

96—Laussat, the colonial Prefect, to Clark, le 1er fructidoran 11.—Returns thanks for a communication from Clark; felicitates the United States on the magnificent and important acquisition, and dwells upon the richness of the soil, salubrity of the climate, and the other advantages of the country. Concludes by saying that he is awaiting the orders of his government.

97—Clark to Citizen Colonial Prefect, New Orleans, 18th Aug., 1803—Communicating a letter of the Secretary of State, enclosing news of the cession of Louisiana, and stating that the President has informed him that he should convene Congress on the 17th October, to ratify the said treaty.

James Madison, Secretary of State to Daniel Clark.

[As this letter is an interesting historical fact, we give it entire.]

DEPARTMENT OF STATE, Oct. 31, 1803.

Sir:—The present mail conveys to Governor Claiborne and General Wilkinson, authority to receive or take possession of Louisiana, and to Governor Claiborne, authority to administer, for the present, the Government of the ceded country. The possibility suggested by recent circumstances, particularly a protest from the Spanish Government against the cession from Fmace to the United States that delivery may be refused at New Orleans, on the part of Spain, required that provision should be made as well for taking as receiving possession. Should force be necessary, Governor Claiborne and General Wilkinson will have to decide on the practicability of a *coup de main*, without waiting for the reinforcements, which will require time on our part, and admit preparations on the other part. In forming that decision, they will need the best and quickest information from the spot. Governor Claiborne will write to you on the subject, and there can be no doubt of the zeal with which you will render them every aid of this sort. Should a *coup de main* be resolved on, there may be a call on you for assistance of another sort. A co-operating movement of the well disposed part of the inhabitants will be of critical advantage, and it is desirable that it should, in concert with the military councils, be prepared and directed in a manner to give it its best effect. Your knowledge of local circumstances; your acquaintance with the disposition of the people, and with the principal characters and their views, will enable you to render most acceptable services on such an occasion. It is presumed that Mr. Laussat may also render his influence over certain descriptions of the inhabitants, useful to the object. Mr. Pechon has, in the strongest terms, pressed him to do so. Should he be well disposed, a frank and friendly communication and co-operation between yourself and him is particularly to be wished, and I doubt not, will be prompted on your part. It will be agreeable to hear from you on the receipt of this letter, and in every stage of the interesting business, which is the subject of it. The mail will henceforward go from this to Natchez in fifteen days, and return in the same time. To double the chance of quick and certain conveyances, duplicates by water may also be expedient.

I remain, sir, very respectfully, your most ob't serv't,

JAMES MADISON.

DANIEL CLARK, ESQ.

98—Wm. Dunbar to Clark, Natchez, 16th Sept., 1803—This is historically a very interesting letter, referring as it does to the information the writer has been assisted by Clark in obtaining in answer to certain queries of the President, about the revenues of Louisiana. He makes the whole population of Louisiana little more than 50,000, without going further East than the River Amite, the black population 36,000, and upwards of 10,000 men able to bear arms; he hopes the Ursulines of the Convent will be preserved in their rights; and makes certain geographical inquiries about the State. This letter concludes with a strong denunciation of lawyers, and a hope that the Louisianians will organize a court of arbitration in civil cases, to rid themselves of the evils of litigation.

99—James Madison to Daniel Clark, Virginia, Sept. 16, 1803—Refers to several letters: the last, of the 12th of August, received from Clark, and to the importance of procuring information on various subjects relative to Louisiana, its boundary, &c., which Clark's local knowledge may be able to furnish. Refers to a letter from Governor Claiborne, concurring in the opinion that the Prefect meditated opposing the delivery of Louisiana into our hands; Mr. Madison does not credit the report. He fears that Spain may oppose the execution of the cession. He therefore directs Clark to watch every symptom which may show itself, to ascertain what force Spain has in the country, where it is posted, and how the inhabitants would act in case a force should be marched thither from the United States, and what number of them could be armed, and actually brought into opposition to it. Urges dispatch upon him.

100—Daniel Clark, Consul of the United States for New Orleans, to James Madison, Secretary of State, July 21, 1803—Refers to

the determination of the Marquis of Casa Calvo to draw off three or four settlements, and place them on the land reserved by the Spaniards on the other side of the Iberville—which measure he has encouraged, to produce jealousy among the French and Spaniards.

101—Madison to Clark, August 12, 1803—Announcing the receipt of a letter from Mr. King, to the effect that, on the 30th of April, the Island of Spain was ceded to the United States. The treaty is expected every moment.

102—Clark to Madison, August 12th, 1803—Expressing congratulations on the cession, as insuring the safety and prosperity of our western country.

103—Thomas Jefferson to Daniel Clark, Washington, July 17, 1803—Conveying the terms of the cession, and his intention to convene Congress on 17th October, and requesting information necessary to a proper organization of the said Territory, and inclosing certain queries. These queries refer to boundaries, foundation of land titles, feudal rights, public lands,—to courts, laws, taxes, debts, annual products, revenue, and all other points calculated to develop the revenues of the new State. Directs inquiries to be made, and the parties will be paid by the Secretary of State. Some of these queries are rather curious. Such as, for instance, "What is the number of lawyers, their fees, their standing in society? Are the people litigious? What is the nature of most law suits? What are the usual dilapidations of the public treasury, before it is collected, by smuggling and bribery: and, secondly, by the unfaithfulness of the agents and contractors through whom it passes?"

104—Clark to Jefferson, New Orleans, August 18th, 1803—Acknowledges receipt of his letter and inclosed maps, and replies to the queries, and congratulates the President upon the splendid acquisition.

105—Madison to Clark, Washington, Department of State, July 30th, 1803—Incloses the Treaty of Cession of 30th April, 1803.—Calls his particular attention to the article relative to property and papers, and to the article assuring the inhabitants in all their rights, etc., and directs inquiries as to the relations between the Spaniards and the Indian tribes.

106—Clark to Madison, New Orleans, August 18th, 1803—Acknowledging receipt of foregoing letter.

107—Clark to Madison, River Mersey, 23d Dec., 1802—Advising that General Victor, with his staff, says he has been from General Wilkinson that Louisiana is to be divided into two territorial governments, and W. C. C. C. is to return to his own government of Mississippi.

110—Dayton to Clark, Washington, Oct. 22, 1802—Refers to confirmation of the Treaty of Cession, and the apprehended opposition of Spain to the measure. He says: "West Florida was understood by the French Government to be included in the cession, and we are entitled to as much. This will carry us to the Apalachicola. The Rio Grande or the Rio Del Norte would have been insisted upon by France as the western boundary, and not a foot must be yielded to them. If we should ever consent to be bounded by the River Mexicano, the Adayes, and the Nazari, it must be in consequence of our exchange of what we justly claim west of that line, for all the Spaniards own or claim east of the Mississippi." This letter speaks of Clark's high position with the Government, and requests information from him on certain points.

111—Dayton to Clark, Washington, Oct. 31, 1803—Refers to the passage of the bill authorizing the President to take possession of Louisiana. Says that no time will be lost in taking possession of it. Says "he has done all in his power to impress the President with the idea of your (Clark's) services, and the important benefits which may be derived from your knowledge and influence." He speaks of yourself and of Mr. J. as the two persons from whom he has received the most satisfactory information

112—Dayton to Clark, Washington, Nov. 7, 1803—Refers to the probable government for the new Territory. Says, "The further settlement of Upper Louisiana, on the West side of the river, will not be encouraged, nor even permitted, from motives of policy, which I will detail to you hereafter. As to limits, he says they will claim, on the east, to the Perdido, but the Western limits are more uncertain, and ought, it is said, to extend to the Rio Bravo. Western boundaries ought to be settled now, when the French are engaged in war."

113—Clark to Madison, New Orleans, 16th Aug., 1803—Inclosing answers to the President's queries about Louisiana.

114—W. C. C. Claiborne to Clark, near Natchez, May 15, 1803—Acknowledges receipt of his favor of 22d ultimo, and thinks no (Clark's) statement to the Intendant upon the subject of the Mobile and Tombigbee commerce, highly proper. Censures the Prefect for advising the Spanish Governor to let things remain as they were, until advices could be received from Europe. Thinks it proceeded from a treacherous design. Says he will watch a certain Indian missionary, against whom Clark had warned him.—Inquires about the relations of the Spaniards and Choctaws, and urges secrecy in his letters.

115—Claiborne to Clark, near Natchez, 18th Nov., 1803—Acknowledges receipt of Clark's letter, of 17th inst. Commends his zeal and his judgment, in asking leave of the Spanish Government for one or more companies of cavalry, to pass by land to New Orleans, to escort the commissioners. A few of the militia of the country will accompany the regulars from Fort Adams to New Orleans.

116—Claiborne to Clark, Natchez, Nov. 22, 1803—Refers to his (Claiborne's) probable descent from Fort Adams, in four or five weeks, to take possession of New Orleans.

117—Clark to Wilkins, New Orleans, 8th June, 1803—Refers to private affairs.

118—Wm. Burnam to Clark, New Orleans Prison, Aug. 8, 1803—Complains of being unlawfully imprisoned as a citizen of the United States.

119—Wm. Leman to Clark, Military Agent's office, Philadelphia, October 18, 1803—Containing invoice of tents, camp kettles, &c., for the United States, shipped to Clark's address.

120—Dunbar to Clark, Natchez, April 2d, 1803—About paying a dividend to Hulings.

121—Claiborne to Clark, Natchez, November 30, 1803—Intimating that, if force is necessary to gain possession of Louisiana, it will be employed with as much energy and promptitude as could be wished.

122—Clark to Thomas Jefferson, New Orleans, August 18, 1803—In reply to the President's inquiries for information of the state of affairs in Louisiana.

123—Fulvar Skipwith to Clark, Paris, May 16, 1803—Trusts, if he has received letters from him about the cession, before its divulgment, he will buy lands; not if it has got out as people will then hold their lands too high. Lord Whitworth, the British ambassador, has just left Paris, and war is momentarily expected. An American commission is forming here to settle all claims embraced in the Convention of 1800. When this is closed he will shape his course for the banks of the Mississippi. Wishes information about Louisiana, to inform people who make inquiries, and to ship goods himself.

134—John Steele, Natchez, 28th May, 1803—Introducing General Dayton, a member of the U. S. Senate.

125—Dayton to Clark, Washington, Dec. 12, 1803—Acknowledges receipt of favor of 21st ult. and his satisfaction that the Spanish will offer no opposition to the cession. Clark's name not appearing with Gen. Wilkinson's in the commission was owing to his not understanding with the Prefect.

126—Clark to Madison, New Orleans, July 21, 1803—Encloses a copy of a letter forwarded to the Consul General in Paris; complains strongly of the delay of Mons. Laussat in the province, and his measures against the American party. The Marquis de Casa Calvo has it in contemplation to draw off certain settlements of the island of Orleans, on the other side of the Iberville river. Thinks that this is a desirable measure, and will promote the jealousy of the French and Spanish, and throw the commerce into our own hands.

127—Clark to Madison, New Orleans, July 26, 1803—Encloses memoranda respecting the country. Refers to the anxiety of the Spanish officers to obtain the country on the lands of the Mississippi. Dwells upon the great advantages of the western part of Louisiana, and the importance of our acquiring it. The French and Spanish officers were at open variance, on account of the presumption of the one and the illiberality of the other. He is consulted and confided in by the Spanish authorities. Refers to details given to Gen. Dayton, and to the declaration of the authorities, of the request of Gen. Wilkinson, for permission to send two vessels to our settlements on the Mobile river, from an apprehension that it might interfere with the negotiations pending.

128—Clark to Madison, New Orleans, Aug. 18th, 1803—Acknowledges the receipt of Madison's letter of 15th August—20th July, encloses a letter, in reply to me, from the President. Gives a very bad character to the Prefect. Says the people generally are contented with the Charge—all, in fact, but a few adventurers lately arrived from France.

The Caton Letters.

129—Clarke to Coxe, Washington, 14th Feb. 1808—This letter refers to his affair with Miss Caton. He says: "I am sorry to have now to mention, that it not only has not been effected, but that the affair is forever ended. The reasons I will give you when we meet, although they are too trifling in themselves to have caused the effect produced by them." Wishes that he (Coxe) would state that he had no knowledge whatever of the affair.

130—Clark to Coxe, Washington, 9th Feb., 1809—The most important part of this letter, is the reference to the Caton affair. He says: "I shall set off this evening for Annapolis, and shall pass two or three days there. If I find Miss Louisa Caton as favorably inclined towards me as you have hinted, I shall endeavor so to secure her affections, as to permit me to offer myself to her at my return to this country, in the course of the ensuing winter. I shall first go home to settle my affairs." On this subject I have never yet spoken to her, and I now communicate my intentions to you that you may inform Mrs. Coxe, who will, I hope as well as yourself, keep the affair quiet. At my return I shall inform you of the results."

131—Clark to Coxe, Washington, 12th Jan., 1808—Refers to political affairs, cotton speculations, and to the Caton affair, of which he says: "Your account of my visits to Annapolis, have been, as usual, much abused. Whenever I am fortunate enough to induce any one to engage herself to me I shall let you and Mrs. Coxe both know it; but until I see *pour a mes affaires*, I shall make no engagement."

132—S. White to Clark, Washington, May 30, 1808—Hopes C. has arrived safely in New Orleans. Refers to General Wilkinson's

attempt to create popularity in his difficulty with Clark, and to other political matters. Referring to the Caton love affair, he says: "During my stay in Maryland, I had the pleasure of hearing from your capricious but sweet little La.; she is well. You must hasten back my friend, and improve the fleeting hours of life; for they are now never well spent but in the bosom of love and beauty."

133—Robert Goodloe Harper (uncle of Miss Caton) to Clark, Baltimore, Sep. 27, 1808—Acknowledges receipt of Clark's letter of 2d August, and one from Keene, 30th August, in which he says, "You (Clark) are well," and adds "you are much pleased with the note in answer which you got in Philadelphia from Louisa, from which I perceive that he has had some communication with you on the subject. Refers to some reprehensible conduct of Keene. Indulges some political predictions about the independence of the States of Spanish America. Refers to Keene's being taken by the English, with a cargo of flour; blames him strongly. He concludes, "We have your elegant presents, the medals, handsomely framed and hung up in our parlor, where we constantly look at them with the interest inspired by everything that is connected with you."

134—R. G. Harper to Clark, Baltimore, September 12, 1808—Attributes the failure of Clark's letter to what Mr. Jefferson calls "the curiosity of the post-offices," and adds "to have our most delicate family affairs, our private concerns, and our chit-chat with our friends exposed to the views of such men as Gideon Granger and his master, is not a very pleasant thing;" refers to Clark's embarrassments with deep regret; to the revolution in Cuba, to be followed by another in Mexico; to a publication he is preparing on Wilkinson's conduct; to the proofs of Wilkinson's corruption, and Clark's purity. Speaks of Wilkinson's coming on and threatening to challenge him (Harper) and abused him to some of the leading democrats, whom I gave to understand, as soon as I heard of it, that they were not to repeat any of his slanders. They took care to observe the caution, and there the matter ended. "Louisa is quite well, and looks very well, she very often gets her aunt to ask whether I have heard from you, and when I expect to hear." Refers in strong terms of censure to Keene.

135—S. White to Clark, Washington, May 30, 1809—Says: "The Carrolls and Catons are well, and L——a, it is said, has it in serious contemplation to take the veil."

136—S. White to Clark, Washington, November 20, 1808—Refers to the blunders of the administration. "I saw L——a the other day. She is more blooming and charming than ever. How can you stay away; she wants to see you. God bless you! Come on immediately!"

137—S. White to Clark, Washington, December 2, 1807—Expresses impatience on account of his absence, speaks [of their Congressional mess, and says: "I suspect strongly that your love affair keeps you in ——; how unhappy such a suspicion, even, would render the fair Miss L., of Georgetown, and Miss D., of the Pennsylvania Avenue, to both of whom, it is reported here, you are going to be married—whether at once or in succession, public fame has not decided. The good old mamma of one of the ladies sends every day to inquire whether Mr. Clark has come. How can you be so cold? In the name of all that's lovely, hasten to the bosom and arms of beauty, swelling and expanded to receive you."

138—Letter of introduction from Mrs. Caton to Clark, of a young French gentleman, Xaupi.

139—Margaret Coxe to Clark, 4th Feb., 1807—Letter incomplete. Appears to refer to Clark's courtship and marriage.

Clark and Coxe to Chew and Relf.

140—Clark to Chew and Relf—Plaquemine, 27th June, 1802.—Expresses his dissatisfaction at being detained for the regular and sea letters, and the sloop Sally passing him. Refers to business affairs. The following is the important part of this letter:

"I now enclose to you Mons DeGrange's note for the balance of his account to me, last year. The negro Lubin, I took to prevent his being sold to any body else; I wish you to offer him the preference of him at the same price; if he does not choose to take him back, Chevalier Malarcher will buy him of you. Independent of the note, I paid, after DeGrange's departure, $350 for him, by his direction, which last sum, when received, is to be placed to my credit, I have charged myself with the money when I paid it. I wish you not to push Mr. D. for payment, but wait, consistent with safety, such time as he may find necessary.—Should he be inclined to go away before the sum is paid, you must insist on security." Begs them to assist other persons named.

141—Coxe to Chew and Relf—Phil. July 23d, 1802—Acknowledges receipt of their letters of 1, 4, 5 and 19th June, via New York. Refers to arrival of Mr. Clark in the schooner Eliza, at New Castle on 20th inst. by whom he received Chew and Relf's letter of 21st ult. Will leave that day to see Mr. Clark at Darby, 7 miles from Philadelphia.

142—Coxe to Chew and Relf—Philadelphia, August 6, 1802, says "that Mr. Clark wrote you very full per mail a few days since, since which he has come up to Germantown, and to-morrow sets out for New York, then to embark for England. In this letter he says: "The Board of Health have advised a general removal of the inhabitants, to prevent the effect of fever."

143—Clark to Chew and Relf, Liverpool, October 7, 1802—Has been there three days, and is about to leave for London. Alludes, in bitter terms, to the cotton frauds, as caused by the culpable neglect of Chew and Relf. Give many cautions in regard to shipping cotton. Estimates their losses at £30,000 or £40,000 sterling. Says he is almost mad with shame and vexation. That he is preparing a handsome present for the Intendant. Advises C and R. to cultivate the friendship of the Intendant.

144—Clark to Chew and Relf. London, October 13, 1802—A letter of introduction to Mr. Robert Percy.

145—Clark to Chew and Relf, October 13, 1802—Refers to business affairs, and says: "I wish it were possible, in order to punish you for your negligence, that you should feel half the torture of my proud heart, when forced to solicit favors. Heavens! how humiliating a situation, and how unused I have been to it! How painful is the reflection that this has been my fate, when I thought myself in affluence."

146—Clark to Chew and Relf, October 7, 1802—Reminds them of the direction given by him from Cooper's Ferry, about h[is] family and plantation, and family affairs.

147—Clark to Chew and Relf, Margate, October 17, 1802—Refers to the displacement of Captain Jones from the command of the Thomas Wilson. He will sail for Orleans in the first ship of Mr. Coxe's that may arrive. Begs them to hasten remittances, and sell every species of property that may be necessary to sustain Coxe's credit. Says that their credit, (Chew and Relf,) had suffered vastly in Liverpool and London, from the frauds in cotton, and concludes "On your exertion our existence depends; do not, therefore, suffer us to perish."

148—Clark to Chew and Relf—London, October 19, 1802—Refers to a conversation with Mr. Morgan from whom he learned that Spain objected to giving up Louisiana until France had done what she promised. Mr. Morgan has been introduced to the officers appointed for Louisiana—Laussat, Provincial Prefect; Gen. Victor, Commander in Chief of the troops; and J. J. Ayme. The French Government was determined to take possession of Louisiana, without regard to the opposition of the Court of Madrid. They talk of embarking, at the end of this month, 4,000 men for Louisiana. Desires that these matters should be communicated confidently to Morales. Desires it to be kept a secret. Advises them to make what sales they can; hopes that the French will not embark as soon as they say.

149—Clark to Chew and Relf—October 22, 1802—Refers to the preparation of the French to take possession of Louisiana; does not know how the province can sustain so large a body of men; hears that Pitot has been introduced to the Prefect, gives an interesting account of the political state of affairs in Europe; expects to sail for Orleans by the 20th of next month; gives directions about the sale of the ropewalk, and negroes, and ships, and to urge the collection of all their debts.

150—Clark to Chew and Relf—London, Oct. 22, 1802—Notes the arrival of another cargo of damned bad cotton, and blames them for shipping it; says they must account for it to Coxe. Refers to some difficulties in clearing the vessel, and in a postscript, adds: "It might be well to circulate the news of war—it must tend to raise your goods, and lower produce."

151—Clark to Chew and Relf, Paris, 16th Nov., 1802—Leaves Paris to-morrow for London, and hopes in a fortnight to embark at Liverpool for Orleans. Has been introduced to the French officers appointed to govern Louisiana, and was well received by them. The expedition will shortly sail. The Adjutant General, a Lieut. Colonel and an Ensign accompany him (Clark) to England, and will go out with him. May show this to Morales, but must not hint it to anybody else. Advises early remittances and sales of property.

Jerome Degrange to Daniel Clark.

152—From Jerome DeGrange to Clark, dated Bordeaux, 24th July, 1801—Writes in French, of his arrival in France, and the favor shown to him by a friend of Mr. Chew. Speaks of speculations that might be made by shipments to Bordeaux; desires his compliments to Mr. Chew. He then says, "I take the liberty to inclose a pacquet for my wife, which I wish you to deliver: permit me," he says, "to reiterate my demand upon the kindness proffered by you before my departure, that if my wife became embarrassed, you would aid her with your counsel."

I hope, before long, to be ready to return to my family. I expect that I shall return to Bordeaux in two or three months, to terminate my affairs here and to prepare to rejoin my friends. I have a law suit here respecting a property left to my wife's family, which I shall leave in charge of M. St. Brie, during my absence. I fear this affair will cost much money. I leave M. Bernard in charge of my other affairs. I have not heard from my wife, which gives me pain, as I hoped to hear from her before I left for Provence. It is said there will be peace before the end of the year, but I fear there is no such good luck. Hoping soon to hear from you, I am Tres affectionne serviteur et ami.

DEGRANGE.

Miscellaneous Letters.

153—Clark to Delacroix—1st May, 1810—Asking for his endorsement of a note for $6,000

154—Mary G. De La Roche, Phil., June 3, 1810—Asking Clark to use his influence to induce William Harper to do something for his sister and her children.

155—Hulings to Clark, Phil., Sept., 1812—Refers to family affairs; the embarrassment of Clark's mother; Hull's disgraceful surrender.

From the same, 28th Oct. Refers to Relf's presence there, and the apoplectic fit of Clark's aunt.

156—Coxe to Clark, Phil., 23d Dec., 1812—Is agonized at the non payment of Hampton's drafts, and expresses his fear in the most gloomy and desperate language; sees no prospect of relief.

157—Hulings to Clark, Phil., 30th Oct., 1812—Informs C. of the death of his aunt, Mrs Jane Clark

LETTERS OFFERED BY DEFENDANTS.

158—A long letter signed by Coxe, in the handwriting of Clark dated Philadelphia, Jan., 18, 1802—Gives general instructious in relation to the management of their business, and enters into a very elaborate detail of their immense transactions.

159—David Bradford to Chew and Relf, Bayou Sarah, Nov. 27, 1802—Says he has received theirs, in which they advice him of Mr. Clark's departure for the United States, appointing them (Chew and Relf) his attornies in facts, and refers to some accounts.

160—Coxe (handwriting of Clark) to Chew and Relf, Philadelphia, Feb. 26 1802—a long and continuous letter, down to March 11, referring to business affairs.

161—Clark to Chew and Relf, Philadelphia. March 8, 1802—Advising them that a bill on Mr. Lacet would not be paid.

162—Clark to Chew and Relf, Philadelphia, March 14, 1802—Acknowledges receipt of theirs, of Jan. 21. Speaks of purchases he has to make for La Vergnes, Morales, and the Assessor. Refers to the probability that France will not get Louisiana; and the unhappy fate of St. Domingo. Requests R. & C. to attend to his parents, and send them on by ship. He will probably go to England and France, without delay, to push your business. Gives many directions about business.

163—Coxe to Chew and Relf, (per Spanish lady) Philadelphia, July 3, 1802—Learned, the day before, that the schooner Eliza had arrived in the Mississippi, with Clark, at which he is rejoiced. Encloses two books, "The Suppression," and "The History of the late Administration."

164—Coxe to Chew and Relf, Philadelphia, July 9, 1802—Speaks of his great embarrassments, and of his inability to accept any further for them. Blames them for the incautious cotton purchases, and gives directions for the future.

165—Clark to Chew and Relf, Philadelphia, Feb. 18. 1802 Returned three or four days from Washington, where he saw the President and officers of Government. There seem to be no doubt that France is to have Louisiana; they must prepare for it. Fears that he will be requested to go back shortly. Asks them to forward information respecting the sentiments of the people, and deny to his creditors, that they have any property of his in their hands.

166—Coxe to Clark, Philadelphia, December 23d, 1802. Is happy to hear that peaceable possession will be taken of Orleans; speaks of the condition of his affairs being much better than represented; refers to business affairs: says that Venelle will not be your Governor, but Gen. Dearborn or Governor Claiborne will, "either of which would be infamous appointments." He adds: "The tide of emigration to Louisiana is running strong, and you may expect to see in its train half the bankrupts, scoundrels and fortune seekers in the United States. Beware, therefore, of the arts and knavery of many able men of talent, who will visit that country. Edward Livingston, of New York, late mayor of that city, and district attorney, a man of lost reputation and fortune, though of excellent abilities as a lawyer, sails for Orleans in a few days. He is a very sanguine speculator, and more likely to endeavor to link himself with you than any one I know.

"You may make him useful, but never confide in him. He possesses much plausibility, and will get into favor at Orleans, and may possibly hope for political preferment, though, having been lately dismissed from the office of district attorney for misapplication, 'tis said, of public money, he cannot be in favor with the cabinet."

167—Clark to Chew and Relf, Cooper's Ferry, July 29th, 1802—Notes his arrival within sight of Philadelphia, (but does not enter) after eighteen days passage. Refers to cotton frauds which will compel him to embark for Europe without seeing his parents. He says: "Eternal damnation could only surpass the sufferings of mind and body, which I must bear, when I thought it was almost out of the power of fortune to put me an inch out of my road. I have made up my mind and will sail this week before my quarantine is over." Will travel through Europe to aid Chew and Relf's credit; gives directions about shipments to England, which, if they cannot be done in American bottoms must be disguised as formerly; if not to England, make shipments to Havana, under Spanish colors, putting some Spanish sailors aboard; refers to a cargo to their address, which he told the shipper he might find the port shut, but that you (Chew and Relf) will find means of having the dry goods, if not even the wines and brandy, *landed at Natchez, as the Nankeens and silks, per Eliza, with very little costs;* gives many business directions.

168—Coxe to Chew and Relf, partly in the hand writing of Clark, Phila., 30th March, 1802—Refers to many affairs of the joint concern. Makes the following suggestion of back-door influence in the Customhouse of New Orleans: "Should the port be shut, you must use your influence with the intendant to give you leave to load the vessels you may have consigned to you, so as to get all the produce you have on hand shipped. I have it now in contemplation to send you back the Sophia, with a large parcel of China and India goods, in hopes she will arrive a little before importations from hence are prevented, and as these things are cheap here, and can not be imported on such advantageous terms from other places, I am in hopes that they may answer, and serve you as a fund, in the fall of this year. For fear the port should be shut when the brig arrives, I will have the major part of these articles put up in large tight casks, that if you are forced to enter them for deposit, you may afterwards take out the *contents*, and, if necessary, supply the place of it with earthenware, which will always sell at Natchez. In this case, I recommend to you, if there is any strictness observed, to take Christovals' or Andrees Fernandez's stores, which have back doors to them, the keys of which you most get into your possession, and of which you know by experience the use that a friend of ours was accustomed to make."

169—Clark to Chew and Relf, New York, 17th August, 1802—He will embark to-morrow in the ship Lydia for Greenock, and will either stay in England some time, or return immediately, accordingly as he finds things; urges them to exert themselves to support Mr. Coxe's credit, &c., &c. Notes the presence of three French frigates, with 900 negroes aboard, which, under pretence of embarking at Guadaloupe to take possession of one of the ceded islands, they carried off and wished to sell to the Spaniards at Carthagena. They were ordered away, and have come here in distress. They have been refused permission to land the negroes here; warns them against their comin to Louisiana. Advices have arrived that the Emperor of Morocco has declared war against us, and two of our merchantmen have been taken by the Tripolitans.

170—Coxe to Clark, (unknown,) Philadelphia, Nov. 18. 1803—Thinks that no part of West Florida has been ceded to France by Spain, and that if negotiation takes place, as it is said to be the case, all the acts of the Government must be valid.

"Spain promises to cede to France, after the entire execution of the conditions relative to the Duke of Parsue, the province of Louisiana, with the same extent it *now has* in the hands of Spain. and that it had when France possessed it, and such as it should be after tue treaties *subsequently* entered into between Spain and *other states*." And 1st, 'tis notorious that Louisiana, as *now possessed* by Spain, does not comprise West Florida. 2d. By a clear inference from, and interpretation of the words "*as when, France possessed it*," they are merely part of an explanatory clause, which received its final and complete elucidation from the *last* part of the sentence, viz.: *and such as it should be after the treaties subsequently entered into between Spain and other States.*" Here let us inquire, what are the *treaties*, and what the *States* here alluded to, which define what should constitute the remaining or future territory of Louisiana, seeing that some part of it had, by these treaties, been lopped off, and ceded to other powers. The answer is clear and unequivocal, that these treaties are: 1st. That every treaty of 1763, to which France and Spain are both parties, and which cedes to Great Britain all the country east and south east of the Mississippi. 2d. The treaty of 1783, by which England recedes to Spain, or acknowledges her right by conquest, of the *two Floridas*. 3d. The treaty of San Lorenzo, in 1795, by which the southern boundary of the United States is defined. Louisiana *is*, therefore, and *should be*, to use the words of the treaty, the country *west* of the Mississippi, including the island of N. Orleans. The Prince of Peace, when applied to by Mr. Pinckney, at the request of Messrs. Monroe and Livingston, to know whether the Court of Spain did not acknowledge the claim of France to West Florida, replied peitishly, "You may as well ask me if my shirt is yours," and treated the question with contempt and anger.

He is, therefore, easy as to the validity of our Baton Rouge grant; imagines that the part of Louisiana, far West of the river Mississippi, will be the boon we shall offer, and give in exchange for the Floridas; advises them to buy 90,000 more acres of the Baton Rouge grant. Thinks that the leading points in the remonstrance of Spain against the cession of Louisiana on the unfounded claim of France to the Floridas; and the non-fulfillment of a negotiation made by France, He does not believe our Government will prohibit or encourage the importation of slaves; if they do they may evade it as at Charleston, where in spite of prohibiting state laws, they are landed off Charlesten bar by ship loads. He says, "I therefore strongly advise your immediately writing Green & W. to contract with some Guinea house for the delivery of a cargo or two of the proper kind at New-Orleans, or on the river below, restricting them to such prices as can be afforded.—If he has any scruples about this business, advise him to carry it on under the name of Chew and Relf. It is a necessary branch of our land speculations. The mode I suggest, is the easiest and safest, and will prevent what you seem to fear, any odium attaching to it, as it will be the act of others, and done in foreign vessels. The same ships which brought them could be loaded with cotton for Liverpool, and the proceeds applied by G. & W. to pay for the slaves. You might safely venture to order 1000 to be sent and that done, our fortunes would be made, and we might quit trade forever."

171—Clark to Chew and Relf, Philadelphia, 29 March, 1802—Expresses thanks for their kindness to his family, as well to Chew and Relf, as to his other friends. Mr. Coxe went out of town yesterday, and will be back in a few days.

172—Letter of a committee, New Orleans, 5th Aug., 1830, to Beverly Chew, signed Thos. Urquhsrt, Wm. Nott, J. Henderson, J. H. Shepherd, J. Linton, L. Millaudon, presenting him with a service of plate, in testimony of his fidelity as collector.

173—S. Jaudon, Cashier of Bank of U.S., New Orleans, Nov. 25, 1831, to Beverley Chew—Endorses the resolutions expressing the high opinion of the Board of the Bank of the ability of his (Chew's) administration of its affairs.

GENERAL GAINES' LETTER, OFFERING COMPROMISES.—Complainant also filed the following, as referred to in the cross-examination of Mr. Patterson:

To the purchasers and present claimants of the Estate of the late Daniel Clark, Esq.

Notice is hereby given to the purchasers and present claimants of the estates devised by the late Daniel

Clark, Esq., of the city of New Orleans, to his only daughter, Myra Clark, (the wife of the undersigned,) or such parts of the said estate as were taken possession of and lawlessly sold by Richard Relf and Beverly Chew, the pretended executors of the said Daniel Clark, that having ascertained that the said Relf and Chew, with their copartner or counsel, L. C. Duncan and others, have been endeavoring to deceive and delude the said purchasers and claimants with the false impression that the claim of Myra Clark has been defeated in the Courts of the State of Louisiana, and that the undersigned and his wife are unwilling to come to trial in the Circuit Court of the United States—In order, therefore, to guard the said purchasers and claimants from further imposition, and to enable them to see through the veil behind which the swindlers are contriving their own escape from the infamy which they well know awaits them, the undersigned takes this method of assuring the said purchasers and claimants that no decision or trial upon his wife's claim has ever taken place in any of the State Courts—that she was twenty-four years of age before she was advised of her being the daughter and heiress of her deceased father, Daniel Clark, who departed this life before she was seven years of age. As soon as possible, after being advised of the nature of her claim, proceedings were instituted in the Probate Court of New Orleans. Previously to the day of trial, however, she had the good fortune to learn that a quorum of the Judges of the Supreme Court of the State had purchased valuable portions of the estate in question, and were, consequently, disqualified to sit in judgment in her cause. Inasmuch as the defendants would have appealed to the Supreme Court, when defeated in the Court of Probate, her only alternative was to bring the suit in Chancery now pending in the Circuit Court of the United States.

The undersigned, therefore, acting in accordance with the wishes of his wife, who has constantly desired only to have a speedy trial before an impartial tribunal, and to the worst of her adversaries she would most willingly "*return good for evil*,"—even to those who have *publicly denounced her as an imposter*—and being anxious, as she has constantly been, to put it in the power of her calumniators to meet her before an impartial tribunal, (as she knows the Supreme Court of the United States to be) by whose decision she will cheerfully abide. To prove the sincerity of these declarations, she is willing to make a liberal deduction in favor of all the purchasers who will, without further delay, come to trial at the present term of the Circuit Court of the United States. Cordially concurring in these just and benevolent views and wishes, the undersigned and his wife make to the claimants aforesaid the propositions which follow:

1st. To any one of the purchasers and present claimants aforesaid who will forthwith answer our Bill, and otherwise do whatever may be necessary and proper to meet us in fair trial in Chancery, without any further attempt to delay, we will make a deduction of 25 per centum in the amount of which we may ultimately be entitled from such person or persons, should the final decision be in our favor.

2d. To any of the said purchasers and present claimants who may, before the 22d instant, desire a compromise, and take the necessary steps to render the compromise effectual, we will make a deduction of 50 per cent. in the amount of that part of the estate held by such claimant or claimants.

The aforesaid purchasers and present claimants are respectfully advised to separate themselves from the lawless executors and their co-partners in guilt, and take counsel of men who have no interest in shielding these high-handed robbers from condign punishment, as it must be obvious to all such purchasers and present claimants that they will be greatly benefitted, and in no possible event injured, by availing themselves of the above liberal propositions; to those who reject or disregard them, it is the painful duty of the undersigned to say, that no other effort on his part will be made to effect a compromise.

EDMUND P. GAINES,

for himself and his wife, Myra C. Gaines.

New Orleans, April 14th, 1840.

Referred to by Mr. Patterson, in his cross-examination, 20th June, 1849. J. W. GURLEY, Com.

Introduced by complainant. GURLEY.

NEW ORLEANS, LA., May 11, 1848.

CHARLES PATTERSON, ESQ.—SIR—A final decree having been rendered by the Supreme Court, the highest judicial tribunal in the United States, settling forever in favor of the undersigned, heir at law, the painful controversy with you; and believing, as we do, that you have acted in strict accordance with the sacred principles of EQUITY and JUSTICE—and that, in determining to meet us upon the MERITS OF THE CASE, you have incurred the displeasure of many of the lawless holders of the estate for so many years withheld from us, we take this occasion to assure you that we regard your long and strenuous opposition, and that of your counsel, though often of a character very harrassing to us, as under all the circumstances of the case, unavoidable, and perhaps, essential to facilitate the full and perfect establishment of our rights upon a firm basis without some years more of acrimonious controversy.

Our rights being now established beyond the reach of mortal litigation, we freely and voluntarily assure you of our determination to guard you and your heirs from every expense or loss that may attend the result of our late controversy.

With great respect your ob't serv'ts,

EDMUND P. GAINES,
MYRA CLARK GAINES.

Complainant also filed the Epitaph of Daniel Clark, as follows:

Hic IHS Jacet
DANIEL CLARK
Slegone in Hibernia natus
a Puerro Louisiane in coin
in hac civitate,
dum sub Hispaniâ dictione esset,
Federalorum Statuum Consul
propter preclaras Virtutes
Renunciatus,
dein, Aurelianensis Agri
popularium unanimi voto
primus Gentis Americanæ
consilio, Delegatus assedit
amplus at sine maculâ
Congestas Opes,
in egentium profudit necessitates
liberalitate tamen factus ditior
Obiit bonis omnibus flebilis
Augusti XVI, A. D. MDCCCXIII.
Ætatis Suæ XLVII.

Amicus Amico
hoc Monumentum Erexit.

CLARK'S WILL OF 1811.

The following is the will of 1811, under which defendants sold, and was admitted to probate:

State of Louisiana, Parish of Orleans, Court of Probates—Office of the Register of Wills.

Ne Varietur. (Signed,) Js. PITOT, Judge.

In the name of God, Amen.

I, Daniel Clark, of New Orleans, do make this my last will and testament.

Imprimis: I order that all my just debts be paid.

Second: I leave and bequeath unto my mother, Mary Clark, now of Germantown, in the State of Pennsylvania, all the estate, whether real or personal, which I may die possessed of.

Third: I hereby nominate and appoint my friends, Richard Relf and Beverly Chew, my executors, with power to settle every thing relating to my estate.

New Orleans, 20th May, 1811.

(Signed) DANIEL CLARK.

Ne Varietur. (Signed) Js. PITOT, Judge.

Defendants offer a statement of letters on file in the Department of State, at Washington, from Daniel Clark, Consul of the United States, showing to whom they are addressed, from what place, the month, day of the month, and year.

These letters are addressed to James Madison, Elijah Cushing, Governor Claiborne, Brigadier General Wilkinson, Fulivar Skipwith, Don Andrew Lopez de Armento, Albert Gallatin, Don Manuel Salcedo.

With the exception of one, dated the River Mersey, December, 1802, all these letters are from New Orleans, during the months of June and December, 1802, and March, April, May, June, July, August, September, October, November, December, 1803, and January 42, 1804.

THE ARGUMENT.

The testimony being closed, it was agreed by the Counsel, that three gentlemen on each side should address the Court, to wit: Messrs. Wright, Campbell and Grymes, for the plaintiffs, and Preston, Duncan and Myles Taylor, for the defence.

As an accommodation to Colonel Preston, who is a member of the Legislature, and was desirous of returning to his public duties at Baton Rouge, he was allowed to address the Court before complainant's counsel opened. His speech was therefore the first delivered in the case, but, as it is more in order, we produce it after Mr. Wright's opening.

ARGUMENT OF P. C. WRIGHT, FOR COMPLAINANT.

May it please the Court: Complainant claims to be the only legitimate child and heir at law of Daniel Clark, born in lawful wedlock of said Clark with Zulime, née Carriere, about 1806, and entitled to her *légitime*, or four-fifths of his succession as forced heir.

Sketches the history of Daniel Clark, his birth of Irish parentage, his arrival here in his minority, about 1787, to live with his uncle, whose ample fortune he inherited. He entered largely into mercantile pursuits. His enterprise, his pride, and chivalry of character, patriotism and philanthropy—his influence in political affairs—are dwelt upon. His pride, however, inflicted the wounds under which his daughter now writhes.

Sketches the history of Zulime Carriere, a creole of Louisiana, of French parentage, distinguished for beauty, of respectable family, fully the peer of Daniel Clark. At the age of 13, married to Jerome DeGrange, who had wickedly imposed himself upon her, being previously married. Intimacy arose between her and Clark in 1801; during which year DeGrange sailed from New Orleans to Bordeaux. On return, DeGrange is charged with bigamy. Clark believed the charge against DeGrange, and proposed marriage with Zulime. She goes to the North with Madame Despau to procure proof of the former marriage of DeGrange, and arrived at Philadelphia in the autum of 1801, or spring of 1802. She meets Gardette, who informs her that he was present at DeGrange's former marriage. Clark then claimed that she, Zulime, no longer had any reason to refuse being married to him: they were accordingly married, agreeably to the forms in Pennsylvania. The marriage was to be kept secret until that with DeGrange was annulled. Zulime came to New Orleans to have such marriage annulled. Clark at the same time went to Europe. DeGrange was prosecuted, convicted of bigamy, and fled the country. Clark and Zulime cohabit as man and wife, but the marriage was kept secret. In 1806, Zuline, at Clark's suggestion, brings a suit against the name of DeGrange. Judgment of divorce is rendered. But Clark still postpones the promulgation—not a solitary instance of a reprehensible weakness. In 1809, Clark was a delegate in Congress. It was then reported that he had addressed Miss Caton, of Maryland. This rumor caused Zulime much distress. She went to Philadelphia to get proof of her marriage; but not succeeding, and believing that it was impossible to establish her marriage, she concluded to marry Dr. Gardette, with whom she lived until his death, in 1833. Complainant, sole offspring of this marriage, was born in New Orleans about the year 1806, and was placed with Colonel Davis. She remained in the family of Davis, and was educated, in ignorance of her parentage, until 1832 or '33, when it was disclosed to her by Davis himself. All the witnesses concur in representing Clark as warmly attached to Myra, and taking a great interest in her education. In 1811, Clark being about to leave for Philadelphia, made his will in favor of his mother, creating Relf and Chew his executors. He conveyed a large amount of property to Davis, Bellechasse, and Delacroix, for the benefit of Myra. On his return, he received this property back, with the exception of about $4,000, which was to be appropriated to the education of Myra. At this period Clark began to bring his extensive commercial enterprises and speculations to a close, preparatory to that retirement and enjoyment of his collossal fortune, which he seems to have long anticipated, and most ardently desired. He feels, however, the greatest anguish and solicitude for the daughter of the ill-used Zulime, and he resolves to devote the residue of his life to repairing the injustice he has done her. In 1813, he made a will, revoking that of 1811, declaring the circumstances of his marriage, the legitimacy of Myra, and creating her his heir. But this will was never permitted to see the light. It was carefully concealed from Myra. In 1832, circumstances transpired in the family of Samuel B. Davis, which resulted in disclosing to Myra the secret of her birth and wrongs—so long kept from her by the avarice and cupidity of the defendants.

To ascertain the true position of plaintiff, the following points present themselves:

1st. Did Daniel Clark and Zulime Carriere enter into and consummate the marriage contract? If so, at

what time and place, and were they, each of them, in the capacity, legally, to perform that act, and is the complainant the sole issue of that marriage? If the affirmative of these propositions be shown, then there follows the inquiry—

2d. What rights resulted to complainant upon the estate of Daniel Clark, upon his death? The law answers the inquiry, in that it declares one of those rights to be the possession and enjoyment of four-fifths of that estate, notwithstanding any disposition thereof, *causa mortis*, to the contrary. It therefore results—

3d. That if Daniel Clark did, by last will and testament, dispose of any more of his estate than one-fifth part, or the "disposable portion," such disposition must fail as far as it exceeds that portion, or encroaches upon the *legitime* of the complainant, his heir; but as to the remainder, or disposable quantum, it must stand, unless we have shown that the will was legally revoked by a subsequent will, which has been unlawfully suppressed or destroyed.

4th. Did the acts of Relf and Chew, in disposing of the property found in Clark's estate, confer upon the present holders thereof, the defendants in this suit, or those from or through whom they derived their title, any right or title whatsoever thereto, beyond the one-fifth, or the disposable portion thereof.

5th. Can the defendants, the *terre tenants* in this suit, claim the equitable consideration of this Court, as purchasers and holders in good faith, without notice?

6th. Have the defendants acquired a right by prescription against complainant?

7th. In what manner is the *legitime* of the complainant in the succession of Daniel Clark to be estimated and awarded to her?

8th. Is this Court competent to afford the relief prayed for—that is to say, to grant to her the *legitime* of her father's estate, in kind, in whosoever hands it may be found?

I. The fact of marriage is proved by the witnesses, Mesdames Despau and Caillavet. It took place in the spring of 1802, in Philadelphia, where the parties had gone to remove a certain obstacle to their marriage, which was done. Numerous witnesses to the paternity stand uncontradicted, as well as those to the marriage. Clark acted towards, and spoke of her as his legitimate child. He so recognized her in his will of 1813, which we do not set up as a devise, to claim under it, but claim the benefits of it as a solemn declaration by Clark of one true relative to him. The other points have been already determined by this Court, and affirmed by the Supreme Court.

HISTORY OF THIS SUIT.

Sometime about the year 1832, complainant discovered the secret of her birth. About this time she married William Wallace Whitney, son of General Joshua Whitney, of New York, one of the most prominent and worthy men of that State. Having learned the facts of her history from her foster-father, Davis, she came to New Orleans, and set on foot a prosecution against Relf and Chew, and others, in the State Courts, claiming in the sole capacity of instituted universal heir of Clark, by the spoliated will of 1813. She was induced to suspend her proceedings in the State Courts, by discovering that even the highest judicial tribunals of the State could not preserve their ermine unsullied by the frauds which had plundered her birthrights; two of the Judges having purchased, for a small sum, property of the estate of Clark, worth thousands, and influenced by the combination of wealth and power arrayed against her. She then, in 1836, filed her Bill on the Equity side of this Court. The difficulties here are all known to the Court. Twice it has gone to the Supreme Court on mere questions of practice, and the decisions were favorable to the complainant. The third time it went up on a certificate of division of opinion upon demurrer. The demurrer was overruled, but the Bill was directed to be amended in two particulars: (1) that Caroline Barnes, a legatee in the spoliated will of 1813, was not a necessary or proper party to establish that will; (2) that the executors, Relf and Chew, of the will of 1811, could not be called to account in the same Bill with the *terre tenants*, the other defendants in the Bill. All parties who had appeared in the suit except Charles Patterson, joined in that demurrer. This was in 1844. The Bill was amended as directed by the Supreme Court. But the defendants again set up the same demurrers. In 1840, Mr. Patterson, from laudable considerations, withdrew his demurrer and his dilatory exceptions, and met the case upon its merits. His case came to trial in May, 1840, and a decree was rendered in favor of complainant against Patterson. On appeal, the Supreme Court, in 1848, modified this decision by decreeing to complainant the *legitime* of the property, revenues, etc., and declaring her *status* and defining her rights in that and the present case, in every minute particular. From 1845 until 1848, this case stood at rest in this Court. It was then determined to answer the Bill, regarding the points decided in the demurrers in 1845, and limiting complainant's claim to that of forced heir, regarding the will of 1813, only as a declaration by Clark, of the validity of the marriage, and the legitimacy of Myra. The case now stands on this amended Bill. New parties have been brought in by revivors. The answers to the original Bill are allowed, by consent, to stand against this Bill. We are now here for a full hearing upon the pleadings and proofs.

The points decided in the Patterson case are as follows: first, that this is not a case to go before a jury in a trial of legitimacy of Mrs. Gaines; second, that this Court, as a Court of Equity, had jurisdiction of the case as to all the defendants now before it; third, that the marriage of D. Clark, with Zulime, née Carriere, took place at Philadelphia, and that said marriage was valid; fourth, that Mrs. Gaines was the legitimate offspring and issue of that marriage; fifth, that the previous marriage of Zulime and DeGrange was void by the laws of Louisiana and Pennsylvania, that the burden of proof lies upon those who make objections to the validity of the second marriage—it is not necessary for complainant to produce the record of the bigamy; sixth, when a marriage is proved, the presumption of the law of the land is in favor of the legitimacy of the child born of said marriage, and it will be incumbent in him who denies it to disprove it; seventh, that the prior marriage of DeGrange is proved; eighth, that the sales of property, by which defendant, Patterson, derived his title, were made without authority, judicial, or otherwise: ninth, that defendants knew the sales were from Relf and Chew, made in a representative character, and were bound to inquire if such character were legal; tenth, that the plea of prescription is not applicable; that the time allowed by the statute, when this suit was brought, determine the right of the party, and that time has not expired; eleventh, Mrs. Gaines, as forced heir, is entitled to such a portion of her estates, as her father could not deprive her of, either by donations *inter vivos or mortis causa;* the will of 1811 is not null, but reducible to the disposable quan-

tum of the estate; twelfth, according to the 29th article of the Civil Code, chapter 3, section 2 of the code of 1808, the disposable quantum would be one-fifth of the aggregate of the property of the decedent in Louisiana; the *légitime* four-fifths.

Thus far, the *status* rights and equities of complainant are determined and established beyond dispute.

The defendants are precisely in Patterson's position, except in one single particular, that Relf and Chew allege they were copartners of Clark, entitled to one-third of his property, and consequently that complainant's *légitime* must be restricted to one-third. The same evidence upon which Patterson's case was adjudicated is contained in the record in this case. Three of the witnesses,(Despau, Caillavet and Mr. S. B. Davis,) have been reëxamined, and testify again to the same facts, substantially. (Here follows a recapitulation of the depositions, and the letters relied on by plaintiff, all of which have been noted before.)

Defendants have introduced more than forty witnesses to prove that Clark was of high standing, and to prove his celibacy. Two other witnesses, Mrs. Wood and Mrs. Stanard, also infer this negative of his marriage from some certain acts and words of ordinary gallantry. (Here follows an enumeration of the proofs of defendants.)

The following points are established by the proofs:

I—Daniel Clark and Zulime Carriere, at the time of their marriage, as charged in the bill of complaint, were both of them legally competent to contract marriage.

The marriage being proved, the law presumes it to have been valid. The proof of an impediment or incapacity is thrown upon defendants. This is determined in the Patterson case.

That Jerome DeGrange and Zulime Carrière were married *pro forma*, is admitted by us. Had he the legal capacity to contract such a marriage? Defendants maintain that he had, and introduce various proofs: 1. DeGrange's application for a license, his oath of his capacity to marry, his license and marriage, according to the rules of the Catholic church. 2. The proceedings of an ecclesiastical investigation into DeGrange's alleged bigamy, and his acquittal.

We have opposed to these, (1) certificate of marriage of DeGrange with Barbara M. Orsi, by Rev. G. V. O'Brien, in New York, 6th July, 1790, in presence of three witnesses, who sign the same; the testimony of the following witnesses, Mesdames Despau, Caillavet, Benguerelle, Alpunte, for complainant; of L. Cavalier and Jean Canon, witnesses for defendants. This is all that is known of DeGrange. Such men are soon forgotten, except by those who have good cause to hold in mournful remembrance his bold and infamous deception.

The competency of the Spanish ecclesiastical record as proof, is denied. Who are the parties to it? Barbara M. Zembell d'Orsi, the same who was married to DeGrange, in New York, in 1790. Her evidence is unworthy of belief. Though she says she told the truth, even if she swore falsely, she could not be punished for perjury. The second witness, Maria Yllar, is also impugned. The third witness deserves our sympathy and commiseration. She is Maria Julia Carrière; she beholds him in whom her heart had fondly trusted—to whom she had plighted her solemn vows, with all the young ardor of new-born love; the father of her children, arraigned for a crime whose lightest penalty would tear him from her side, unworthy as he was, and consign him to the hard fate of a galley slave for life. Well might she dissemble and stifle every conviction of his guilt. She had no cause of fear or apprehension, had she known that she was only required to *play her part* in a pleasant farce! Geronimo DeGrange is allowed to prove his own innocence. All these parties were strongly interested—prompted by the strongest motives to conceal the truth; their reputations required it.

II. Clark and Zulime were married in Philadelphia, according to the forms and solemnities recognized there sometime about the latter part of 1801, or early part of 1802. The precise point of time is not so material as the fact. The Supreme Court in Patterson's case fixed date in 1803. This accounts for the efforts of defendants, by numerous proofs and letters, to prove that Clark was not in Philadelphia in 1803. Madame Despau thinks marriage took place in 1803, from certain associations; it may have been in 1802; her impression is that it was in 1803. It was shortly previous to Clark's departure for Europe. Madame Caillavet says, "it is her personal knowledge that Mr. Clark proposed to her sister about the year 1802 or 1803. Zulime went north to get proof of the previous marriage of De Grange; whilst there, Madame Caillavet received a letter from Zulime, saying that she and Clark were married. Here is positive proof, which must dispense with the necessity of proving that Clark and Zulime were in Philadelphia in 1803. As to precise dates, witnesses are usually cautious and hesitating; not so as to facts. The voyage of Clark to Europe is a conspicuous fact; it took place in August, 1802. (Vide letter of Clark to Chew and Relf, dated August 17, 1802.) He went there on account of certain frauds in packing cotton, shipped by him. The first communication to Coxe of these frauds. by his advices from Europe, is made in March, 1802. On the 1st April, 1802, Coxe writes to Chew and Relf of these frauds. On the 7th April, 1802, Coxe writes to have the parties exposed connected with the fraudulent packing. The third letter, on same subject, July 9th, 1803, written after Clark had left New Orleans for Philadelphia, but before his arrival there. On the 3d July, 1803, Coxe writes that he heard the schooner Eliza had arrived in the Mississippi with Mr. C., and he expresses his relief for his early arrival. Coxe's letter to Chew and Relf, 22d April, 1802, says: "The schooner Eliza, on board which Mr. Clark has taken passage, goes to-morrow morning for your port." Thus is seen the precise date of Clark's departure for Philadelphia, and nearly the time of his arrival in New Orleans. While in Philadelphia, in the spring of 1802, Clark had proposed going to Europe, but not upon the emergency which sent him there soon after. He wrote to Relf and Chew, Philadelphia, 14th March, 1802, in apparently good spirits, and says: "I will probably go to England and France, without delay, to push your business." The first communication from Clark to Chew and Relf, on the subject of his hasty departure for Europe, and the cause of it, is dated Cooper's Ferry, 20th July, 1802, in which he refers to the necessity of departing for Europe in consequence of the damnable frauds referred to.

Now let us see what were the movements of Clark from the 1st November, 1801, to his departure from

Philadelphia to New Orleans in April, 1802, prior to his going to Europe in August of that year. On the 13th October, 1801, Clark executed a power of Attorney to Chew and Relf. On the 26th October, he filed in the same office a power of attorney from Coxe. No other document is found, until 4th March, 1803, after his return from Europe. A letter from David Bradford, Bayou Sara, Nov. 27, 1801, to Chew and Relf, acknowledging the receipt of their favor of 7th instant, in which he says, "you advise me of Mr. Clark's departure for the United States." Again, a letter from Coxe to Chew and Relf, written by Clark, of date Philadelphia, 18th January, 1802, referring to Clark's arrival, and their business arrangements, says that due attention will be given to their (Chew and Relf's) letters from 29th October to 15th December, including those of 7th, 10th, 11th, and 25th November last, to Mr. Clark.

Another letter from Coxe to Chew and Relf, in Clark's handwriting, dated Philadelphia, February 23, 1802. The same letter is continued at different dates as follows: February 26, March 2, March 4, March 9, March 14. A letter from Clark to Chew and Relf, Philadelphia, March 8, 1802; also, March 14, 1802; also, a letter from the same to the same, February 28, 1802, in which Clark refers to his return from a visit to Washington, where he had been well received by the President; also, a letter from Clark, Philadelphia, March 11, 1802. In none of these letters is there any reference to the frauds in the cotton packing. The first letter in which that subject is mentioned, is dated Philadelphia, March 30, 1802; the next is dated Philadelphia, April 7, 1802; another, April 22, in which Clark's intended departure the next day for New Orleans in the Eliza, is mentioned. Joseph H. Timlay writes of having met Clark in New York in the winter of 1801-2. Thus is it shown that Clark was in or about Philadelphia from November or early in December, 1801, until April 23, 1802.

Now, let us trace Zulime. Defendants introduce a general power of attorney of DeGrange to Zulime, his wife, New Orleans, March 26, 1801; acts of sales of slaves by Zulime, dated November 16, October 25—(in the latter, the consideration of the slave is an hypothecation, payable three months after date, for $300.) The said hypothecation is released January 30, 1802. There is also a power of attorney and substitution to Caillavet, November 9, 1801. At about this date, Zulime and Madame Despau sailed for New York; and it is as equally probable Clark arrived in Philadelphia about the same time. From facts contained in the record, we infer that DeGrange returned to New Orleans in the winter or spring of 1802. Margarette de Orsi, his wife arrived shortly afterwards. There is no fact to weigh against the presumption of the departure of Zulime and sister from New Orleans, and their arrival at New York and Philadelphia in the latter part of 1801; and we have shown that his (Coxe's) memory is altogether at fault, as to dates. We have seen what he wrote; now let us hear what he says in 1849. In his deposition he says, Clark arrived in Philadelphia in a vessel from New Orleans during the last days of July, 1802. He was at Wilmington on July 22, 1802, and came to Philadelphia in five or six days after. On his arrival he commenced making preparation for an immediate departure for Europe on business of importance, and left the city for New York, from whence he sailed for Europe in a very short time. This was previous to the middle of August, 1802. "Clark was in Philadelphia on two several occasions in 1802, when he left me a power of attorney. Immediately after, Clark left for New Orleans, where he remained until June; then sailed from thence to Philadelphia on his way to Europe, and arrived at Philadelphia during the last days of July, 1802. He was engrossed in business whilst in Philadelphia." "Whilst in Philadelphia, in 1802, he staid part of the time at Germantown, part of the time at my (Coxe) house, and occasionally at the hotel." On further reflection, it was on his subsequent visit that he stayed with his family at Germantown. The memory of Coxe was naturally directed to the period during Clark's presence here, connected with the all-important occurrence of the frauds in packing cotton, April 7, 1802. This accounts for his hesitancy in speaking of other circumstances. Coxe says that Madame DeGrange arrived in Philadelphia in the early part of the year 1802; and that Clark arrived shortly after the birth of Caroline, which, he believes, was in April, 1802. Madame DeGrange left Philadelphia soon after the birth of Caroline, for New Orleans, in the spring of 1802. Thus it appears that the departure of Mr. Clark for New Orleans, also the departure of Madame DeGrange thence, the subsequent arrival of Mr. Clark and his departure thence for Europe, are the prominent events, occurring so nearly together, as to lead the memory of Coxe to the date of one of the most important of them, to wit: Clark's hasty departure for Europe.

The locality of parties, time, place and circumstance are then favorable to the complainant's allegations.—The statement by Coxe about Madame DeGrange's arrival in Philadelphia, and his interview with her, is, to my mind, an entire fabrication—beyond all belief prompted by self-interest and a desire to conceal or gloss over his conspiracies with Chew and Relf to swallow up the estate of their former friend and benefactor. Clark and Coxe were both high-minded, chivalrous, proud, ambitious and aspiring men; they were attached friends, but their friendship was more that of mutual interest and joint commercial enterprizes. Can credulity itself believe that Daniel Clark would have taken a woman who was merely his mistress, or his toy for an idle hour, and the offspring of his illicit amours, to Daniel W. Coxe, the first merchant of Philadelphia; that he would make such a man the keeper both of his secrets and the fruits of his forbidden pleasures, and a pandarer to his lusts? The hypothesis of the complainant is far more easily to be reconciled with this state of facts—that Zulime was Clark's lawful wife. Clark had not then become ambitious. He had a fine estate to which he meditated retiring, to live in ease and affluence. He had neither become besmeared by the quagmires in the field of politics, nor maddened by its pestilential atmosphere. The marriage of Zulime was not beneath him. On his return from Europe, in 1803, about the time of the transfer of Louisiana to the United States, his character appears to have been undergoing an entire change. His character is then tainted with pride, ambition and eccentricities; he aspired to some brilliant alliance, but he bethought him of his solemn vow before God and man, unkept, and paused ere it was too late to retrace his steps.

The proofs of the marriage, then, are:

1—Testimony of Madame Despau, who was present, who relates all the facts, in a narrative marked with truth, simplicity and perspicuity—all of which are con-

sistent with Clark's movements and conduct from 1801 until 1807. She speaks of the marriage, the witnesses; of the discovery of DeGrange's bigamy, his condemnation and escape. Of Clark's singular concealment of the marriage with Zulime; his courtship of Miss Caton; the distress of Zulime, and her marriage with Gardette.

2—Madame Caillavet confirms Madame Despau. Was not present at the marriage, but she knew of Clark's proposal to her sister; of her hearing of the marriage through Madame Despau, and Clark's acknowledgment of it. These ladies are widely separated when they testify—one being in Cuba, and the other in Mississippi.

3—Pierre Baron Boisfontaine, who testifies in 1835. He was a cherished and confidential friend of Clark, and relates with fidelity Clark's affection for Myra; his munificent arrangements in her behalf; his keen regret for his conduct to his wife and child; of the interested intermeddling of friends; and finally of the atrocious crime in the destruction of his last will.

4—Joseph Deville Degoutin Bellechasse confirms Boisfontaine, and asserts that if not married to Zulime, Clark was never married to any one else. He refers to the will of 1813; he had read it; its destruction was considered by all Clark's friends a great villainy. He explains the will of 1811, Clark having first secured the greater part of his estate to Myra, by confidential trusts.

5—Mrs. Harper, afterwards Mrs. Smyth, who saw Clark's will of 1813, tells of its contents, and of Clark's great affection for Myra.

6—Jean Canon, witness for defendants, who tells us of Clark's fondness for his child.

Against these you have defendants' witnesses: 1. D. W. Coxe; 2. The opinion of the "forty strong;" 3. The ecclesiastical record; 4. The suit of Myra Clark, by Davis, her curator, for an allowance—fully explained by Davis in his testimony; 5. Zulime's suit against De-Grange, filed 3d November, 1805, in District Court, for alimony. What the judgment was, does not appear. This suit fixes the desertion of Zulime, 2d September, 1802. 6. The suit against DeGrange, by Zulime, for a divorce, filed 24th July, 1806. A curator, appointed for defendant, shows that DeGrange was not here. On the record is endorsed, "judgment for the plaintiff." 7. The suit of Despau against his wife, for a separation of property, on account of "incompatibility of humor." In a supplemental petition, 8th February, 1808, Despau makes serious charges against his wife; and the judgment of the court forfeits her rights, but grants no divorce. 8. The records, on the application of Shaumbourg, for the curatorship of the succession of Daniel Clark, as a vacant succession; 9. Certain interesting family letters from his sister, presenting a toilette to Clark, with the expression of a hope that it may soon fall into the possession of a Mrs. Clark, (and various other depositions, letters, and other documents, which we need not particularly specify.)

III. It is established that complainant in this suit is the sole issue of the wedlock of Daniel Clark with Zulime Carriere.

That complainant is the offspring of Clark and Zulime, is not seriously questioned; her legitimacy, and the rights springing therefrom, are the only points now controverted. The only remaining question of fact to be examined, which is not decided in the Patterson case, relates to the averment of Chew and Relf, respecting the partnership between them and Clark, and their claim to two-thirds of his property. The letters, in evidence, show that Clark and Coxe entered into mercantile pursuits, in connexion, in 1791. This business arrangement continued until 1801, when the connexion was dissolved, and Clark retired from active commercial pursuits. Coxe became a partner, to a certain extent, with Chew and Relf. The letters, on file, show the nature and extent of this connexion. In May, 1811, Clark went to Philadelphia, to settle his own affairs with Coxe; and, as attorney of Chew and Relf, to settle theirs. On 31st May, Chew and Relf send a statement of their affairs to Coxe, at Philadelphia, as the basis of the settlement. An agreement was accordingly made. The debts of the concern were first to be paid. Chew and Relf were then to take $25,000 out of the assets, in full satisfaction of all claims against Coxe. The statement referred to, shows a balance, after paying debts, of $80,040, from which Chew and Relf were to take $50,000. Add to this the private property of Chew and Relf, and the sum of $140,000. Add to this the property of Clark, and there will be an addition of $410,200 to the assets of the house, from which said Chew and Relf were to make up the sum of $50,000, in case the first amount of assets of the house properly should fail to produce that sum after paying all its debts. This does not look much like a partnership in the lands of Clark and Coxe, standing in the name of Clark. The agreement of Clark and Chew and Relf (19th June, 1813) might have been an equitable arrangement for the establishment of a commercial concern, which was prevented by the death of Clark. It never was completed. This instrument contains *addenda* in the hand-writing of Relf; it has traces of the villain's hand. These *addenda*, respecting the plantation purchased of S. Henderson, was an application of Relf to charge this debt upon Clark's private estate. On rendering the account of their executorship, in 1837, Chew and Relf say that they have excluded the partnership property of Clark, and Chew and Relf from the inventory, and have only inventoried what *appeared to belong* to said Clark individually. If the agreement of partnership had been complete, there needed to have been no doubt as to what was private, and what was partnership property. This partnership might have been a fair arrangement for the parties provided they had all lived. The letter from Coxe to Clark, July 21, 1810, shows the light in which the relations of Chew and Relf were regarded by Coxe. The defendants can avail themselves of this pretended partnership of Chew and Relf with Clark, as they purchased from them as executors of Daniel Clark, deceased, and as attorneys, in fact, of Mary Clark. They had no knowledge of any such right as Chew and Relf. The agreement was never made public until 1841. Such a claim—if it were admissible—is a mere equity, and they are not now properly before the court for any such relief, which must be sought by a cross bill.

In conclusion: This case is not changed from the aspect which it presented in the Patterson case. The charge of collusion in that case has been disproved by their own testimony. The boast of what they could do, when seriously called upon to defend this suit, has proved to be but the echo of braggart defiance.

The objections to evidences in this case are stated and discussed in the motion to suppress.

It is with sincere feeling that we may now congratulate the complainant upon the speedy termination of

this litigation, which has engrossed her whole thoughts feeling, and energy during almost the entire summer-time of her earthly existence. Her cause has indeed been worthy of so holy and so just a devotion. Her hopes have never been depressed, whilst cheered with the assurance that on her side were justice, equity, and truth. Her confidence in the exalted tribunal whose power she has invoked, has never ceased to inspire and encourage her through her long contest against a combination which would have daunted any soul unsustained by conscious rectitude. To this Honorable Court she acknowledges a lasting obligation of gratitude for its patient indulgence during the last sixteen years. Finally, to your Honors she commits her cause, with a firm reliance that justice will be awarded to the right by your solemn decree.

SPEECH OF COLONEL PRESTON,
For the Defence.

Colonel Isaac T. Preston then addressed the Court, in behalf of the defendants, as follows:

May it please the Court—Before I enter upon the facts and law of this case, I deem it a proper occasion to move the Court to direct an issue to be made for trial by a jury, on the law side of this Court on the two points:

1—As to the fact, whether Daniel Clark was ever married to Zulime DeGrange, and Myra Gaines, the plaintiff, was the child of said parties.

2—To inquire into the facts of the fraud alleged by the defendants, in the suit of Gaines *vs.* Patterson.

These are questions which properly belong to a jury to determine, and by assigning them to their proper tribunal, the Court will be relieved of immense labor and responsibility. Even in cases of equity it is well settled jurisprudence, that where questions of fact and fraud that are proper for the law side of the Court to examine into, the Court will not deprive parties of their constitutional right of trial by jury. It has been decided that in a suit between the heir at law and the devizee, the matter is a proper one for a suit at law. 4 Howard, 649. This is just that case. Mrs. Gaines pretending to be heir, sues defendants, who hold under Clark's mother and devizee. The beneficent provision of our judiciary law, (1786,) provides that equity shall not take cognizance of a case where law affords an abundant remedy. When in any suit, even in Chancery, the facts are strongly contested, we have the authority of the books on equity that they shall be referred to a jury for determination: (read Daniel's Chancery Practice.) Is it strongly contested in this case that Daniel Clark ever was married to Zulime de Carriere; that Myra Gaines was born of a lawful marriage; that the trial between Gaines and Patterson was a fair and honest proceeding? These facts, averred on the one hand and denied on the other, constitute the very gist of this case, and they are facts peculiarly within the province of a jury to decide.

Judge McKinley.—Are you not premature in this motion? Would it not be better to wait until the case is fully presented and argued, and then to move the court to make up such issues as you may think, ought to be submitted to a jury?

Colonel Preston.—The court is correct. I have made this motion now, lest it might be considered that I had waived it by entering upon the merits of the case. There is another matter, to which I must refer, before I proceed to the points of defence, common to all the defendants. The suit against Minor, in which I represent defendants, is distinguishable from the other cases, in this: that it is completely and effectually barred by our law of prescription. Whether a possessor in good or bad faith, whether he had been present at the marriage of Daniel Clark, had assisted in plundering his estate, or had dispossessed Clark by force and buried him under the soil, the said Phillip Minor could hold his property by an unquestionable and complete title of prescription. (He then read the law of prescription, as applicable to immovable estates, even where possessed knavishly and without title, and referred to the service of citation, &c., in this suit, to show that Minor had acquired a full title by prescription.) Minor came down the river more than thirty years ago, in a flat-boat; he found this land unoccupied; he bought it for a small sum; it was then a dreary desert, the abode of mosquitoes and venomous reptiles, he devoted his whole life to cultivating and improving it, rendering far more than its value, in the sufferings, sacrifices, and labor expended on it. The land has now become valuable. And he is entitled to the benefit of the law, which, after thirty years of undisturbed possession, quiets his title, however it may have been originally acquired. So much for the special defence of Phillip Minor to this suit.

I will now proceed to examine the matters in which all the defendants have a common interest,—the points of common defence.

In 1813, died in this city Daniel Clark, a man of considerable note in the early history of this State. He died leaving his estate to his mother, and constituting Chew and Relf his executors. The latter, in the settlement of his estate, sell the property of his succession, by public auction, to various parties, who, or their assignees, now hold said property. When these sales were made, Clark was universally understood and believed to be an unmarried man. There was no risk in buying his property. His estate was duly administered. The purchasers remained in quiet possession until 1836, for a space of twenty-six years, when suddenly a lady appears in this city, and startles the whole community by claiming all this property, alleging that she is the child of Daniel Clark by lawful marriage with Zulime de Carriere. And what does all this monstrous pretension—this extraordinary discovery rest upon? It rests upon the testimony of one single witness, Madame Despau, sister of Zulime, whose credibility, as a witness, will presently be inquired into. But taking her story for the truth, what does it amount to? Why, that Daniel Clark had made a secret, a clandestine marriage with Zulime de Carriere—that the marriage was made in secret, and the secret was long kept by all parties. Now, I shall show, by competent law, that such a marriage was not only illegal, but criminal. Under the Spanish law, and indeed in all Catholic countries, marriage is a sacred, religious ceremony, the solemnization of which should be notorious and public, that all the world might know it and be bound by it; and in order, if there was any legal impediment, that parties might come forward and make it known. Examine the proceedings on file here, in the matter of Zulime's first marriage, and see the formalities required by the old ecclesiastical law in celebrating marriages! In White's *Recopilacion*, and in the Partidas, we find it laid down, that secret marriages are

fraudulent and criminal in the eyes of God and man, and the parties to them are justly subjected to severe penalties. Under the old Spanish law, parties who took part in clandestine marriages, forfeited all their property and rights. Such marriage, then, if it took place, was not only fraudulent as to the world, but it was punishable by the law of the domicil of the parties contracting it. But if there were such a marriage, it was invalid, on account of Zulime's existing marriage with DeGrange. That marriage never was annulled; it could not be annulled by the mere acts of the parties. It required the interposition of the Ecclesiastical Court, which claimed and exercised the exclusive jurisdiction in all matters pertaining to marriage.

And on what evidence does the fact of this pretended secret, fraudulent, and invalid marriage depend? On the testimony of an adulteress! An *adulteress*, for such Madame Despau is proved, on this record, to have been. I refer to the proceedings of her husband against her for a forfeiture of her rights in the marital property, in which she is charged with leading a rambling life, living in open adultery. And what judgment did that pure-minded, that incorruptible Judge, Joshua Lewis, render upon this complaint? He gave judgment for the plaintiff, and decreed a forfeiture of the rights of property against Madame Despau. This is the woman upon whose evidence you are now called upon to dispossess hundreds of honest, virtuous and industrious people, of property which they purchased in good faith, which they have possessed for thirty years, whose money has gone to pay Daniel Clark's debts! What says the good old Spanish law about the credit due to an adulteress? That ancient and honored jurisprudence justly regarded with the greatest horror, the crime of adultery. It authorized the husband to kill the wife and her paramour, when caught in *flagranti delicto*. He must, however, says the Partidas, kill both, as it would be unjust to kill only one. (Read numerous quotations from the Partidas to this point.) Now, our law has virtually abolished the penal provisions of this code, though it is still a part of the common law, or usage of the country, to kill adulterers. Not a week passes that we do not read of some man being slain by one whose bed he has defiled and whose wife he has seduced. Our law does not deliver over the adulteress to be killed, but it consigns her to an infamy far worse than death. It stains, it blackens, it defiles her reputation so that she cannot be heard in any court of justice. The Spanish law says a woman of fair fame may be heard in any case except as a witness to a will, and that exception is made to exempt her from a temporal duty which belongs more properly to man. A woman of fair fame may be heard in any case. Well may it say so, for a woman of fair fame is the paragon of truth, of virtue, and of all loveliness. There can be no purer source of human testimony than this; but an adulteress! Oh! says the Spanish law, she is infamous! She forfeits all her rights and property, and is shut out from courts of justice, and disqualified from testifying in matters involving the rights of others. And she, the convicted adulteress, is the only witness to this secret marriage; this marriage, held in some retired corner of Philadelphia, which no body else witnessed, and which never was heard of until thirty years after it occurred!

Thank God! we live in a State where it could never be a question if such a marriage was valid—where people do not go into a room by themselves, or before a single witness, and, by jumping over a broomstick, become man and wife! Under the old law of this State, parties desiring to enter the holy estate of matrimony had to petition the Vicar General for a license, then the banns were proclaimed in public for four successive Sundays, and finally, after the whole world was apprised of the intentions of the parties, the marriage was publicly celebrated with all due form and ceremony by the representative of St. Peter, and under the solemn sanction of the Holy Catholic Church. There the parties made a solemn oath to cling to one another faithfully, and be true to their marriage tie. If they violate this solemn oath, if they prove recreant to this holy injunctian, if they are faithless to the marriage bed, the Holy Church condemns them to perdition, and considers them perjurers of the first class, violaters of the most sacred oaths. Under such ceremonies and such law, the witness, Madame Despau, was married. She violated her oath. She committed the greatest of perjuries in going to the bed of her paramour! She can no longer, under the Spanish law, be a witness in a Court. She is forever incapable of giving testimony and unworthy of belief. The polluted breath of so vile a wretch should never be heard in a Court of Justice.

But suppose this witness is credible, and the marriage did take place, as sworn by Madame Despau, it was a marriage whose effects were to take place in Louisiana, where the parties were domiciled, and where their property was. It was a secret marriage. Both parties kept it locked up in their breasts. It was unknown to Clark's many intimate friends, who knew his most secret thoughts and purposes. Zulime was equally secretive. So it remained from 1800 to 1836. In the meantime, Clark held himself out to the world as an unmarried man, and flourished extensively among the ladies; and the gentle victim, the patient Zulime herself, instead of pining in sorrow over her secret and Clark's eccentricities, acted very successfully the part of a female Lothario, ready to marry any and everybody that offered, and who, in her eagerness to secure a husband, no sooner finds herself in stress of proof of one marriage, than she enters into another.

Now, under such circumstances, if Madame Despau's story is to be credited, and there was such a clandestine marriage between Clark and Zulime, it was a fraud upon the world, and the complainant, who stands in the shoes of her father, must inherit the consequences of his act, and cannot, by such fraud, recover back the property which has been honestly acquired by the present possessors. You inherit the frauds and imperfections, as well as the rights and titles of your ancestors. Judge Story (read his Equity) lays it down as a fixed rule of equity, that it will not disturb the *bona fide* purchaser of the legal estate, without notice, and for a valuable consideration. And will you allow this complainant to come into this Court, confessing the fraud and imposition of her parent, and demanding that all this vast property shall be wrested from these honest possessors, and given to the offspring of this secret, this clandestine, this fraudulent marriage! We saw this property advertised as Daniel Clark's. He had always been known and reported as an unmarried man. We knew nothing of your in-

trigues, your secret arrangements, your adulteries, and other abominations. We went in open day to Mascaro's coffee-house — a public auction mart — and bid for the property. We paid our money for it, and acts of sale were made out to us before notaries public! To disturb rights thus acquired would be iniquity, not equity! But, oh! we are told of "constructive frauds" and legal implications, and all these foreign interpolations that have been forced into our jurisprudence!

The matter is to be involved in legal mystifications; and, in the end, I have no doubt, the getters up of these monstrous fictions, this stupendous fraud, will show, or attempt to show, that the innocent purchasers of Clark's property, at public auction, for a full and valuable consideration, were really the criminal and fraudulent parties in the transaction! Oh! that I had this case before twelve honest jurors, sworn to examine the facts, and determine them according to law and justice, how soon would I scatter into impalpable particles, all this twisted web of fiction, fraud, and falsehood!

But, fortunately, we are not altogether bound by foreign law. The United States Court, sitting in this State, is bound, in administering justice here, to regard the laws and jurisprudence of the State, and make their decisions conform thereto. If this were not the case, I would as lief see the ghastly cholera, or the destructive crevasse in our city, as a United States Judge.

But let us look more closely into the facts of the case. Was Daniel Clark ever married to Zulime DeGrange, and when did it take place? What say the plaintiff and her witness about time and place? And here I must call the attention of the Court to a striking discrepancy which meets us on the threshold of this inquiry, and adds to the many other proofs to be found in the record of the fabricated character of this whole transaction. When that infamous suit of Patterson, (which I would to God I could blot from the records of this Court, where it must ever remain the memento of disgraceful and outrageous fraud, perpetrated upon one of our highest judicial tribunals,) was tried, it was pretended that the marriage of Clark and Zulime took place in 1803, and the Supreme Court has so adjudged in their decision that it took place. Madame Despau swore to the same effect.

Now, the complainant in this case must have got her information from her mother, who, no doubt, told her of her splendid marriage to Daniel Clark, the millionaire, the great merchant, the ambitious politician—her splendid marriage, consummated so soon and so happily after her unfortunate one with her precous husband. She no doubt dwelt on all the circumstances of so memorable an event. It is an event which a woman never forgets, the day when she took her nuptial vows—that greatest of all days, when she yielded her happiness, her honor, and her fondest devotion, to the man of her choice. It is the day which a woman's thoughts, hopes, and memories must ever regard with holy remembrance and joy. In girlhood, she looks forward to it as the realization of the most exquisite of earthly bliss—the union of two sympathizing hearts; in middle age, it is made sacred by feelings of mutual interest and affection, and in old age it is held in sweet, but firm and distinct memory, when many other facts and incidents have lapsed into oblivion. No woman ever forgets that day. But there were special reasons why Zulime de Carrière should remember the day of her marriage. It was to her a day of release from the most oppressive memories, the most cruel fate. She had been married to a man who had another wife—who trifled with her holiest affections—who inflicted upon her the deepest wrong a woman could suffer. She detected his villainy. He fled the vengeance of the law. She wept in sorrow and despair over her misfortune, and contemplated the future with the gloomiest feelings. It was then that this splendid marriage with Clark was proposed, was accepted and consummated. Who will believe that she could have forgotten the day when it occurred. Oh! never, whilst memory held sway, could Zulime de Carrière have forgotten the day of her marriage with Daniel Clark, if such marriage had taken place. Well, then, the complainant in this humbug suit of Patterson, alleged that the marriage took place in 1803. But when, by the examination of numerous letters of Clark, it was discovered that he was not within a thousand miles of Philadelphia during the year 1803, they change their position. As soon as they ascertained the discovery we had made, (which my colleagues were for keeping a secret, but I was for making it public,) and the complainant was required to state when the marriage occurred, she comes into court and fixes the time in the autumn of 1801, or spring of 1802. And the discrepancy between the averments and the depositions of Madame Despau is got over in her testimony, taken in 1849, by saying, that from certain associations she thinks it was in 1803. Well, now let us see, whether it is at all probable that the marriage occurred in 1802. Daniel Clark left here in 1802, he was on his way to see into some alleged frauds in cotton packing, which seriously impugned his honor and his fortunes. He sped in all haste, and with a mind racked by awful forebodings. He arrived near Philadelphia in July, was quarantined, and the re he addressed Coxe on the terrible affair which so harrassed his mind, and made his situation one to which, as he energetically expresses it, eternal damnation would be preferable. There is no proof that he ever went to Philadelphia. But in August (13th) we find him in New York, and on that day he left for England, in hot haste to investigate the facts connected with the cotton frauds. Now, was Clark in a state of mind then to contract a marriage like this, even if the time and other circumstances rendered such an occurrence probable? Read his letters and observe the distressed, the agonized state of his mind! He could think of nothing but the wreck of his fortune, his hopes, his reputation. Oh! a proud, ambitious, aspiring, pleasure and wealth loving man like Daniel Clark, must have experienced, from the contemplation of the awful precipice of commercial ruin yawning before him, feelings that forbade all pleasure, all quietude, all enjoyment. Would he, the proud, and yet cautious merchant, who refused the hand of a lady that has since become a Duchess—

(Mr. Duncan.—A Marchioness.)

a Marchioness, Duchess, Countess, or something of that sort, I am not familiar with titles of nobility—would this ambitious Irishman, who refused the hand of a distinguished lady, rather than embarrass himself, turn aside from the perplexing anxieties which filled his mind, and overcome the gloom that frowned

like a dark cloud upon his hopes, to burden himself with the cast-off wife of a poor, miserable French syrup maker!

Such are the probabilities and possibilities as to the presence of Clark in Philadelphia in 1803, and his marriage with Zulime.

But where was the other party to the marriage,—where was the poor, virtuous, forsaken Zulime, the victimof that poor Frenchman, who, in my opinion, is the most honest party in this whole tangled web of fraud and fiction. Zulime was here on 2nd September, 1802, living with DeGrange, and at that very time instituting an inquiry into his alleged bigamy, and swearing before the Vicar-General that she did not believe the rumor of DeGrange's previous marriage. Both parties then, were more than a thousand miles from Philadelphia, at the time when it is averred they were married.

In her petitition for alimony, Madame DeGrange says her husband separated from her in September, 1802, which proves that previous to that time they were living as man and wife. What does she then do? She proceeds to New York, then a long, weary and perilous voyage, (for that was before the time of steamboats and railroads), to get proof of DeGrange's previous marriage. But when she gets there, alas! she learns that the records of the church of St. Peter are all burnt and destroyed. She is satisfied with this rumor. She makes no inquiries forfather O'Brien, who was then living there until 1806,as large as life, the very Priest who, it is pretended, celebrated the former marriage of DeGrange. There was the great church of St. Peter, the very head of the great catholic denomination in this country, then standing in a city, comparatively a small one, with a Bishop known to every body, and whose house would have been pointed to her by any body she might have asked; and yet she inquires not for father O'Brien, whom every body knew as well as they did the Battery or Castle Garden; but hearing a rumor that the records were destroyed, came away as well informed as before she had gone there, and then returned to Philadelphia. And now, this trumped up story of the destruction of the records of the church of St. Louis, is to be proved by an Irish girl, whose testimony to any fact could no doubt be procured for two bitts. This girl, in 1846, in telling her story about this marriage, is so definite that she actually retains a recollection of conversations held with her aunt respecting the dress worn by some miserable Frenchwoman, a miserable witness to this miserable marriage. But Oh! here is the certificate of the marriage! there it is, spread out in latin, with all the flourishes and pompous phrases; and where did this certificate come from? It was found among the papers of Dr. Gardette, who had procured it in 1806, at a time when he was the husband of another lady, the highly respectable Madame Defaucher. What had Dr. Gardett to do with the intrigues, the secret arrangements, &c. of Zulime and DeGrange. Gardette's wife dies, and he straitway marries Zulime, in as much haste as the Queen of Denmark, who did not wait for the meats to get cold before she supplied the place of her lost spouse—he thus rushes into the arms of the impatient Zulime, who no sooner hears an idle rumor that Clark is courting somebody else, than she determines to commit bigamy. Gardette and Zulime marry, and this certificate sleeps among Gardette's papers until it is exhumed, forty years afterwards, for the purposes of this suit. But even this certificate refers to the marriage of one Jacobum, not Hieronynum De Grange, and is not, therefore, good evidence of the fact which it was intended to prove. No! may it please your honors, this is all a trumped up story! These rumors of bigamy were all got up to frighten off and get rid of this miserable baker of cakes and confectionary, falsely and absurdly styled a French nobleman, as everything is sought in this whole nefarious affair to be covered up under some high sounding aristocratic titles. The ambitious Zulime wished to get into the society of the *elite*,—she desired to take rank among the *femmes gallantes* of the country, in that age of universal licentiousness—a licentiousness not altogether passed away from our city even in these days.

I have stated that under the Spanish law, which existed at the time of this pretended marriage, that Madame Despau, being a convicted adulteress, could not be received as competent proof of the fact of this marriage. Now, there is another ground which goes to her credit, and places her in a category nearly as bad as that in which she is placed by the judgment of Judge Lewis against her. She was the companion of her sister throughout this tortuous plot—they were *Arcades ambo*, *femmes gallantes*, together, in New Orleans,—all the witnesses say that one was no better than the other. They were here together, they went to Philadelphia together, and there Madame Despau was the witness to her marriage with Daniel Clark. They lived together in New Orleans in one common seraglio, until Clark went to Congress. They then went on to Philadelphia together, and there Zulime, hearing of Clark's attentions to Miss Caton, married Dr. Gardette, in the very face of her pretended previous marriage with Clark. Now, all this time, Madame Despau stands by, aiding and abetting her sister in the commission of the infamous crime of bigamy. She is accessory to that crime which is a felony by the statute of Pennsylvania, of 1791, punishable by two years' imprisonment in the Penitentiary.

JUDGE MCKINLEY—We are not governed by the Spanish law of evidence. The common law governs in all matters of evidence.

J. A. CAMPBELL—I desire to call Colonel Preston's attention to the fact that Madame Despau does not say she was present at the marriage of her sister to Doctor Gardette.

COL. PRESTON: And why did she say she was not present? For the very purpose of avoiding this conclusion, of weakening this argument,—this presumption against her character, which would flow from the fact of her presence at the marriage of Zulime. But if not actually present, she was cognizant of all the movements, the acts and intentions of her sister. They traveled together, they slept together, they knew one another's inmost thoughts; they were thrown among a people who did not speak their language; she knew all about the Caton affair; about the interview with Mr. Coxe, and of the latter sending a lawyer to Zulime to advise with her—a lawyer by the name of Smith. It might as well have been no name at all; but it was a very good name for their purposes, for it forever prevented our getting any clue to the individual, so as to make use of his testimony. Under all these circumstances, who imagines that she was not present at her

sister's marriage with Dr. Gardette, in whose family she lived for sometime after that marriage. Here, then, we find this witness, upon whose testimony this immense property is to be wrested from its present honest proprietors, an accomplice in the atrocious crime of bigamy. It requires no sentence of law to pronounce her infamous and unworthy of credit. She is convicted on her own confession of a high felony, and is incompetent to appear as a witness but for mere form; she cannot be credited or believed in any court of justice in Christendom. In 1806, Madame Despau was convicted of adultery by a judgment of Judge Lewis, but we are told that this judgment only subjected her to a forfeiture of her rights of property. Now, the civil code of Louisiana does not allow one who is infamous to testify in a civil cause: any one who is guilty of the *crimen falsi* cannot be a witness. And is not adultery *crimen falsi*? Oh! the falsehood and perjury of the wife, who has sworn before high heaven to love, honor and obey her husband, to cling to him faithfully, and who yet goes to another's bed and dishonors her husband and steeps herself in infamy by the horrible perjury of adultery!

JUDGE MCKINLEY: What was the judgment in that case?

Colonel Preston read the pleadings and judgment in the case of Despau *versus* Despau. In the first petition of Despau, he only claimed a separation, for causes, as he expresses, too afflicting to mention, which will be found detailed in the ecclesiastical proceedings on her application. But, subsequently, he files a supplemental petition, alleging further, that she had gone out of the territory, was leading a wandering life, living in open adultery.

J. A. CAMPBELL: The petition in this case was filed 8th of February, 1808, and the judgment was rendered 12th of February, 1808.

COL. PRESTON: That was the supplemental petition; the original petition had been filed sometime before, in that, the unfortunate husband, not desiring to proclaim his wife's infamy, from motives of tender regard, to the peace and reputation of his family, had concealed her notorious and infamous conduct, under the mild phrase of "occurrences too afflictive to mention." Now, this, may it please your Honors, is the testimony upon which our property and our reputation are to be wrested from us. The law forbids this; it requires that the witness, whose testimony is to deprive me of life, reputation, property, should be reputable. The complainant sets up her claim. We swear against it. And now comes forward Madame Despau, whose infamous tongue is to be permitted to override the oaths of these honest defendants, and to determine these monstrous pretensions in favor of the complainant. But perhaps this testimony may lead to other circumstances confirmatory of Madame Despau's statements; let us look into some of these circumstances. One of the modes of bolstering up this case, and the reputation of the principal parties in it, is to defame the character of that individual who, in my opinion, throughout these whole proceedings, has acted with more fairness and honesty, and has been treated with more injustice, than any of the actors in this drama. I refer to the poor, honest syrup-maker, DeGrange. He is selected as the scape-goat for the sins of all the other parties. It is necessary to criminate him; and as he is absent, dead, and has no friends, we need not be over scrupulous in our means of accomplishing that end. Hence, these certificates filed, touching the alleged bigamy of DeGrange, and the destruction of the records by which they pretend they could prove his conviction for bigamy.

Now, I admit that it is probable that Madame DeGrange persuaded Clark that Myra was his daughter, that Clark was induced to snatch the child from the polluting atmosphere of the seraglio in which it was born, and placed it with a respectable lady to be raised, removed from the contaminating example and influence of the mother, and that having this bond, she endeavored to persuade Clark to marry her. To accomplish that, it was necessary to annul the previous marriage with DeGrange. Hence all these reports about bigamy, this suit against the name of DeGrange, and this hunting up of documents among the old musty records of the city. Meagre results reward the labor of this hunter-up of documents. The Spanish records, which would prove the criminal proceedings against DeGrange, were all taken away by the Spanish Government when it left the State. Even the volume of the old *Moniteur de la Louisiane* for the year 1802, when DeGrange was tried and convicted of bigamy, is mysteriously missing! All that can be found on this subject is a newspaper paragraph, which refers to the affair of DeGrange's pretended bigamy. Where the extract came from, what paper it belonged to, and in what year it was published, are all left to conjecture. It is very evident, however, that this extract was published much nearer the year of our Lord 1834, when these suits commenced, than that of 1802. This whole story is a wild, a baseless, a transparent fiction. The truth is simply this: When Zulime commenced her concubinage with Clark, she determined to get rid of her poor French syrup-maker. When the child Myra was born, she was supplied with a potent wand to control the feelings and conduct of Clark. DeGrange out of the way, this splendid marriage might be accomplished. Then this bigamy story was trumped up. The busy tongue of rumor set to work to spread it far and wide; interested friends busied themselves in circulating the calumny; it was put into the newspapers, and people who don't read the newspapers much, are in the habit of believing all they see in them—and so it got to be generally believed that DeGrange was a bigamist. And yet not a particle of respectable testimony has been presented to establish this fact. The spurious certificate found, after the expiration of many years, in Dr. Gardette's papers is utterly unworthy the notice of the Court as evidence. The complainant herself proves that the records were destroyed by fire when her mother went there in 1892, to find proof of DeGrange's former marriage. It must, therefore, be fabricated for the occasion. Such are the only proofs of the bigamy. Now, on the other hand, we have the proceedings of the Ecclesiastical Court, which investigated this case fully and carefully, and acquitted DeGrange. Madame DeDrange herself appeared before this tribunal, and confessed that it was a slander, and she had no doubt of the innocence and honesty of her husband. This poor Frenchman emigrated here in 1796, not as Zulime de Carrière pretends, a French nobleman. It is not the least suspicious aspect of this case, this perpetual lugging in of these high sounding titles. It is always the case in infamous and dark transac-

tions, that the parties are connected with the nobility; and seek to cover up their moral shortcomings and real insignificance, by aristocratic pretensions. No! DeGrange was not a nobleman of the French peerage; but he was a nobleman of nature, who sought to support himself by honest industry. He lived here, enjoying the confidence of his fellow-citizens, and supporting his family. Having occasion to go to France, in 1801, to attend to the interests of his family, he receives a power of attorney from his wife and the other DeGranges, to reclaim property left them by some relative in France. He constitutes his wife his attorney to attend to his affairs in his absence. He goes to France, transacts the business entrusted to him, returns and faithfully accounts for his trust—pays over the money collected by him to the DeGranges. In the will of Caillavet, husband of Rose DeGrange, we find an acknowledgment of the receipt of his or his wife's share of the property collected by Jerome DeGrange. It is by this will that Caillavet refuses to give the tutorship of his children to his wife, but expressly confers it on a friend. A fatality attended this whole family. Now, what was the conduct of Zulime during the absence of her husband? It was then that she began to receive the attentions of Clark, that this infernal intrigue, the effects of which have extended even to this remote generation, commenced. She then determined to get rid of DeGrange. Accordingly, in the fall of 1801, she sells all Jerome's slaves, puts the money in her pocket—she even sells that celebrated negro Lubin, who figures so largely in the exciting drama of the destruction of the will, and upon whose testimony this charge of crime and fraud is made against old and highly respectable citizens—the same who was afterwards caught by Mr. Palfrey, in the act of stealing cotton. Thus, whilst Zulime is preparing to go to the North, to obtain proofs of DeGrange's bigamy, she is selling out his property here as fast as she can. She goes to Philadelphia, where she has the child Caroline Barnes, and induces Clark to believe it is his own, although it was born in less than seven months of the departure, of DeGrange, and the fact is also in proof that DeGrange was a healthy, vigorous man, and Clark was generally held to be impotent. She makes Clark, through his friend Coxe, bear all the expense of her *accouchement*. And this child Caroline is raised in the moral State of New Jersey. She lives a respectable life, and so demeaned herself as to secure the respect of every body, and to lead to the belief that she must have come from a purer source than the other daughter. How different her conduct from that of this complainant, who, in her greed of gain, recklessly roots up from the dim past, and exposes, in all their glaring enormity, transactions so disgraceful to those whose good fame should have been with her paramount to all other considerations, and which should have been consigned to eternal oblivion. If she could thus succeed in palming off the child Caroline upon Clark, after a few months' separation from DeGrange, how much easier it would be to persuade him that Myra was his daughter.

Now, can anything be more monstrous and incredible than this whole story of the marriage of this woman to Daniel Clark? Is it possible that such an event could have taken place and she have no memento of it—no billet-doux, no memorial—not a particle of proof. So holy and near a tie as that of marriage exist, and no vestages of it! You, too, so unsuspicious, so confiding, so careless and indifferent after the sad and sorrowful experience of the past! Oh! who would believe so prodigious a fiction? Let the circumcised Jew credit it; no one who believes in Christ will believe that incredible fiction. Are there no proofs; cannot the priest be remembered; the house where the ceremony was performed—some fact which will afford a clue to this mysterious marriage? There was a Mr. Dorsier present; who, and where, is he? There was an Irish friend of Clark's present; cannot some traces be found of him? The marriage was not in the open fields, or in the woods; it must have been in some house or some street, in Philadelphia. Where is that house—what is the name of that street? These things cannot be forgotten, when so many less important facts are so well remembered. No, there was no marriage. The probable story is that, after the birth of Myra, this woman sought by that bond to decoy Clark into the nuptial noose. She probably went to Philadelphia to trump up some proof of DeGrange's bigamy, and thus remove the obstacle in her path. But it is evident that in the distracted state of his mind, at that time, Clark would not have married her if she had been a second Helen, for whom a Troy might have been destroyed. Whilst there, she hears by Madame Caillavet of the arrival of DeGrange's other wife in New Orleans. She hastens to New Orleans to have the villain punished who had outraged her young affections, and at the same time be enabled to promulgate her marriage with Daniel Clark. They arrive here safely. The Holy Catholic Church, justly regarding such an imputation as of the most serious character, has DeGrange arrested and imprisoned. He is brought up for trial before the Vicar General. There is the testimony of his alleged first wife, Jeanbelle D'Orsi. She relates her story with all due simplicity. He courted me, she says, and I would have married him, but he insisted on my going with him to New Orleans, and I looked upon that as the jumping off place of creation. I declined going; the marriage was broken off, and we separated. Other witnesses are also examined, until, lastly, comes the pure, angelic Zulime. She is now to tell the truth; she is now enabled to relieve herself of a connexion which has become odious to her, and to fly into the outstretched arms of Daniel Clark, the merchant prince, and as his bride, to electrify the whole country with her beauty and magnificence, exciting the admiration and envy of the most lofty dames in the land And what response does she give to the inquiry, if she believes her husband guilty of the bigamy charged against him? She answers: "As there is a God in Heaven, and as I expect to be saved, I declare my belief that he is innocent!" Now, did she thus solemnly utter a falsehood? Did she, in the awful presence of the Church, forswear herself? Heaven and earth testify against such an inference! And shall her daughter be permitted now to come before the world, declaring that her mother uttered so horrible a falsehood, to exculpate a man who had evinced all that invincible hate and passion which deep injuries kindle in the female bosom, and which are never calmed or extinguished until sated by complete revenge. Alas, poor DeGrange! you were the injured party in this whole dark tragedy. You return home from your native land, expecting to find a peaceful and happy home; but you no sooner arrive here than the story of your wife's infamy reaches your ears. The town is full of the in-

trigue of your wife and Clark; your wife's affections are gone forever from you; infamy rests upon your name and family; your property has been dissipated, squandered, to minister to the pride and pleasure of your faithless spouse. Under such circumstances, no wonder the unhappy man flies from his home, and buries his sorrow either in the grave or in some remote land, for he has not been heard of since 1806. And thus was poor Jerome DeGrange made the true and real victim of the infamous intrigue, which begot this infamous suit. These are the acts of your mother rising to testify against you. But your father was an honorable, a high-minded man, with no spot or blemish, save those amours, which were matters of course then. Let us see what was his conduct. Early in 1802, as the story goes, Clark married Zulime, and he leaves immediately for Europe. She returns to New Orleans. So does Clark; but they do not come together. Whilst living here, Clark resides in his palace on the Bayou Road; Zulime lives with her sisters, in a house of their own, constituting a seraglio, at which Clark is a frequent visitor. Clark never takes her to his house, to introduce her to his friends—those friends, who were as numerous and as sturdy as the trees of the forest. Then, too, we would suppose that Clark and DeGrange could not be the most intimate and confidential friends in this state of affairs. But here we find DeGrange writing to his dear friend, Clark, commending his wife to his care and protection. And faithfully did he comply with the injunctions of the poor, deluded Frenchman,—he took good care of his dear wife! But the strangest phase in this complicated intrigue is the conduct of Clark, in permitting DeGrange and Zulime to live together as man and wife, after her marriage with him. Was Daniel Clark this sort of man? Was he, proud, high-spirited, and passionate, the man "who would keep a corner in the thing he loved for another's use?" No. He would have cried, like Othello:

> "O that the slave had forty thousand lives,
> One is too poor, too weak for my revenge."

This bare suspicion contradicts the whole life and character of Daniel Clark. It would make that eloquent "*hic jacet*" which attests his character as a man, his honor as a gentleman, his worth as a citizen—it would make it a glaring falsehood, a revolting insult to the dead,—a piece of indecent and ribald irony of one called to his last account. Such an imputation upon the character of Daniel Clark would reanimate his mouldering bones, and cause them to burst the cerements of the grave with horror and anger.

But Clark, if not the protector of his honor, and that of his wife, was at least generous. In 1805, when Zulime was in that situation "in which ladies delight who love their lords," (for Myra says she was born in 1806,) she was in want—she wants bread and meat. Does she appeal to her generous husband, the merchant prince? No; she sues the wretched, ruined DeGrange, for alimony. Clark, the husband, was bound to authorize this suit—to spread on record that his beautiful wife, now *enciente*, should ask for crumbs from DeGrange. Clark knew of the suit—for, in those simple times, suits were to lawyers like angels' visits—few and far between. He thus spread on record the disgrace of himself, his wife, and hoped-for offspring, by asking bread from her seducer. Impossible!

Another scene in the drama. He is the first representative to Congress, from the splendid acquisition of Jefferson. His fame, his talents, his wealth, precede his advent to the Capitol. The beauty and wealth of the country throw themselves in the saloons visited by the splendid bachelor. He addresses the beautiful Louisa Caton, famed to the present day in the annals of fashion and gallantry. The husband of Zulime is enamored and engaged to Miss Caton. The unanimous voice of the country proclaims the father of Myra incapable of this baseness. He afterwards addresses and is engaged to Mrs. Lambert, while a married man; and baseness number two failing, the Lothario addresses Miss Chew, whose words were even now those of simplicity and truth.

The closing scene approaches, as the darkness of eternity, when the heart can conceal nothing, begins to gather around him. He is stretched on the pallet of death. The Chevalier De la Croix, to whom he had confided all that was dear to him in the world from which he was just departing, kneeled down by his side to receive his last wishes. He did not die with the lie in his mouth, that Myra was his legitimate daughter.

"*Hic jacet*" was inscribed on his tomb, as printed in this record. *Hic jacet*, innocent of all the plunder it is attempted to perpetrate in his name. The same *hic jacet* invites us all to beds of eternal bliss, if we have been just on earth. But, if we become participators in schemes of perjury and plunder, it will be inscribed over our sleep of death. But, we will sleep, "perchance to dream"—forever dream.

I beg this court, then, to take this case and determine it upon the evidence developed in the record, without regard to the fictitious and fraudulent showing in the Patterson case. The judge who will expose and denounce that compound of falsehood and corruption, will deserve the highest niche in the Temple of Justice. His "*hic jacet*" will record the virtue, the justice, and wisdom, without which, elevated station can confer neither honor, dignity, nor respect.

ARGUMENT OF J. A CAMPBELL,

For Complainant.

May it please the Court—Daniel Clark, a citizen of Louisiana, died in 1813, leaving a large estate, both real and personal, in that State. The Code of Louisiana casts the succession of four-fifths of that estate upon his legitimate children, in opposition to any voluntary disposition he may have made during his life.

The Plaintiff in this case claims to be the only legitimate child of Daniel Clark.

The first question that arises in the cause is, whether the plaintiff is the child of Daniel Clark; the next, whether she is legitimate? Upon the solution of these questions in her favor, her rights to the legal succession depend.

How is the fact of filiation considered, apart from the fact of legitimacy established? The controlling proof of filiation consists in the possession of the *status* which filiation denotes. Before a child is born, the law recognises its being and provides for its care and nurture. Nature designates in advance the persons, and inspires in them sentiments necessary to the performance of the duties which the helpless condition of the newly-born demand. The child, on its appearance in the world, finds itself in the midst of relations which originated in its first conception, and terminate only with its existence. This position and these relations constitute the *status* of the child, and determine its

place in the society. The most important of these relations is that of filiation.

The mother is made known by incontestible proofs. Nature proves maternity by the evidences of pregnancy, and the perils and pangs of child-birth. The evidence of paternity is presumptive—"*Sein enim est impossible quis cujus filius sit mater certa pater incertus.*" When the facts of nuptials and conjugal union are established, the law determines the paternity of the child—*Pater id est quem nuptiæ demonstrant.* In the absence of the proofs of legal nuptials and conjugal union, there are other proofs of paternity equally conclusive. These proofs result in the establishment of three characters, from which the *status* of the child is incontrovertibly inferred. These proofs consist in ascertaining the *nomen, tractatus, fama*, which attach to the child. A child born to the father bears his name; it receives the treatment (*i. e.*, care, countenance, protection, education,) of a child. The public receives the child and recognises the paternity which the father asserts. The *status* of that child is no more open to dispute. 3 *D'Aguessau*, 181; *Nougorede lois des familles*, 213; 8 *Casus Celeb*, 358; 8 *Denisart, questions d'etat*, 9; 1 *Cochin*, 590.

These proofs, under the common law system, are of equal diguity. When a man and wife cohabit, and no impotency is proved, the issue is conclusively presumed to be legitimate, though the wife may have been unfaithful to her marriage bed. 1 *Moody & R.*, 269, 276; 3 *C. & P.*, 215; 8 *East*, 193; 1 *Barbour Ch. Rep.*, 375.

If there was any sexual intercourse between the husband and wife, at a time when, by the course of nature, the husband might be the father of the child, any infidelity that she might be guilty of, would not vary the case; and it matters not that "the general camp, pioneers and all, had tasted her sweet body," because the law fixes the child to be the child of the husband. 3 *C. & P.*, 215.

In cases when the factum of marriage is not provable, the conduct of parties connected is the best evidence to establish filiation. Starkie details the circumstances which will be received as evidence of marriage and filiation. He mentions, among others, the circumstances of persons recognizing and educating children as their own; the entries in family bibles and on monuments, announcing relationship; the declarations of persons who are dead. These circumstances, he says, are facts, or are solemn and deliberate declarations accompanying facts, and partaking of the nature of facts, which, in the absence of all suspicion of fraud, afford the strongest presumptions, &c. 1 *Stark, Ev.* 47; 2 *Stark, Ev. Pedigree*; 8 *Vesey*, 428.

The same author proceeds, (3 *Stark*, 1101) these are not to be considered mere wanton assertions, upon which no reliance can be placed; on the contrary, in the absence of any motive for committing a fraud on society, it is in the highest degree improbable that the parties should have been guilty of practicing a continued system of imposition upon the rest of the world, involving a conspiracy in its nature very difficult to be executed. *W. Black*, 877; *Waddilove Dig*, 233.

The testimony to the filiation of the plaintiff with Daniel Clark, consists in the proof of the following facts: It is proven that from 1802 or 1803 to 1806 or 1807, the mother of the plaintiff lived in a house provided by Daniel Clark, and in an intimate connexion with him—they cohabited. The evidence shows this, and such was the public reputation of the relations between the parties. Madame Despau was present at the birth of the plaintiff, and identifies her. Clark, before the birth and from that time till his death, treats the child as his own. She bears his name, and was supported by his care and providence. In the family in which she was placed, and in the estimation of his neigbors, the child was his. He made advancements to the child, by deposits of money and property for her use; and, finally, prepared in his last will a charter of her rights as a legitimate child. Coxe and Relf, in their letters, speak of the child as that of Clark's. The child, by Coxe's persuasion, is mentioned in the last will of Clark's mother, as the child of Daniel Clark. The question now arises, was the plaintiff the legitimate child of Daniel Clark? The filiation of Mrs. Gaines having been established, the burden rests upon the defendants to show her illegitimacy. All the presumptions of the law are in favor of legitimacy. Always favorable to innocence when the same effect can be traced to two causes, the one illegal and unjust, the other just and legitimate, the law rejects the first to adhere exclusively to the last. (8 *Denisart*, 4; 3 *D'Anguessau*, 188.) This rule of evidence belongs to the jurisprudence of every State. (3 *Stark, Ev.* 1248; 1 *Green, Ev.* §34.) The defendants assume the ungracious office of impugning the plaintiff.

They assert, first, that her mother was married, at the time of her birth, to one DeGrange, and, if she is the child of Clark, she is an adulterous bastard; secondly, that there was no marriage between her father and mother, that the mother was the mistress of the father; thirdly, that the imputed father was impotent.

The last assertion is contained in the evidence, and is not contained in the pleadings. The fact, if it existed, could not be proven. The allegations and proof must correspond. (*Dan'ls. Ch. Pr.* 411; 10 *Peters*, 177.) The evidence offered on this subject consists of a repetition of the idlest bar-room and brothel gossip, and is not competent.

To prove a case of impotence, the evidence of witnesses who have examined the person of the party charged, is required. (5 *Paige, Ch. R.* 554; *Waddilove's Dig.* 197; *Paynter Mort Dio*, 124, 125, 126, *and note.*) *Froite des proced que sont en usage en France pour le prcuve de l'impuissence de l'homme.* (8 *Cous. Cel.* 26, 9 *do.* 191.)

The evidence of legitimacy is somewhat of a different character from that of filiation. The legitimate child is one conceived during a lawful marriage. The evidence shows that the public repute, in reference to the plaintiff, was, that she was to be the heiress of her father's wealth. This reputation implied legitimacy—the adulterous bastard could not be an heir. Under the laws of Louisiana, he was incapacitated from his birth; he could neither receive from the love of the father, nor by the operation of the laws, more than a bare maintenance from his father's estate. The expectations of the circle in which the plaintiff was placed, were all excited by the declarations and conduct of the father. Bishop Chase testifies—"Daniel Clark was the reputed father of his child Myra Clark; her he openly cherished as such; he embraced her in the presence of his friends as his child in my sight. Other paternity, to my knowledge or belief, was never spoken of

or thought of in New Orleans. She was spoken of as his heiress."

The evidence of Bishop Chase is abundantly sustained by other parts of the cause. The general reputation, the evidence shows, had a substantial foundation. The mother of the plaintiff lived with the plaintiff, and was supported by him. The evidence shows that she was never publicly acknowledged as his wife, and never shared his honors. These facts weaken unquestionably the force of the evidence of legitimacy, which are derived from the repute before alluded to. They show that the possession of the *status* was not, to the public observation, complete. In this country, however, the inference derived from the reputation we have noticed in favor of the child, would lead to a favorable decision for the plaintiff, notwithstanding what was said of the mother. In this country, we have no laws requiring the publication of the bans of marriage—none to prevent clandestine marriages—none requiring the public acknowledgment or registry of marriages. The usual habit of the community is departed from by secrecy; but none of its laws are infringed by maintaining it.

Sir Wm. Scott, in the case of Dalrymple *vs.* Dalrymple, refers to this and adopts the conclusion that the absence of the name and the repute of a married woman, in the case of the wife, is not a fact of grave importance in deciding the existence of marriage when such is the law. 2 *Haggard*, 63.

The public repute in favor of the plaintiff, as the child and heiress to Daniel Clark's estate, is sufficient to establish her claim. This proof, however, is fortified by repeated declarations of the father in favor of the child. All authorities concur in admitting the declarations of the father as evidence in favor of the child. The Roman law in some cases regarded them as conclusive. "We have determined to ordain (*Nouvelle* 117, *chap.*) that if any one having a son or daughter of a free woman with whom he might have been married, shall say in a written act either before a public officer, or under his own hand sustained by three credible witnesses, or in his last will, that this son or this daughter is his child and that he does not call them natural children, they shall be reputed legitimate; and no other proof shall be demanded of them, and they shall enjoy the rights of legitimate children."

Undoubtedly, this rule of evidence was adopted in consequence of the solemn character of the instruments that are enumerated in the law. The common law assigns no special importance to the form of a father's declaration. The fact to be decided by the court is, whether there was a marriage from which the plaintiff is the issue. The declarations of the father constitute a medium of proof to aid the court. What weight shall be given to the respective declarations, is committed to the sound judgment of the court, which is to pronounce upon the proofs. Still, we cannot doubt that the declarations of a father connected with important acts, and which accompany and explain those acts, are of the highest class of declarations. Such is the character of the acts and declarations of Clark in reference to the plaintiff. No witness who has testified in this cause (save De la Croix,) has testified that he ever heard Clark speak of the plaintiff as his natural child. Bellechasse, Boisfontaine, and Mrs. Smith, testify fully to the declarations in his will.

Were the case to stand here, the evidence of legitimacy would be complete, in so far as it is dependant upon a marriage.

The evidence goes further, and proves a marriage in fact, in *presence* of a *Catholic priest and three witnesses, and cohabitation after* proofs of marriage. 6 *Howard*, 1 *Dow's Rep.*, 148 *Waddilove's Dig.* 2 *Hoggard*, 63.

The testimony of Mesdames Despau and Caillavet, is impeached by the evidence of Coxe, that the connexion between Daniel Clark and Zulime Carrière was originally illicit—that the only visit of Zulime to Philadelphia in 1802-3, was to usher the first fruit of this connexion into the world. That Clark was then absent. That he visited Philadelphia but once while she was there, and that this was a hasty, flying visit, under a great pressure of business and anxiety of mind, which forbade the idea of marriage. In some of the most material particulars, this is untrue. Clark left New Orleans for Philadelphia in the latter part of October or early in November, 1801. His voyage was long, owing to a detention at Havana, and the probability is that he reached Philadelphia in December or early in January, 1802. He remained in Philadelphia till the 23d April, 1802, and then returned to New Orleans. In June, 1802, he left New Orleans and arrived in Philadelphia in July or August. Zulime Carrière gives a power of attorney on November 9, 1801, in New Orleans. That power was used in January, 1802. The proof is clear that Clark left New Orleans about the time she did. The conclusion therefore is, that there was no such difficulty in the way of the formation of a marriage as Coxe intimates.

This statement of the facts suppressed by Coxe, and upon which he argues to his conclusion, invalidates his conclusion. Madame Caillavet states that the rumor of DeGrange's bigamy preceded his return from Europe. That these rumors induced proposals of marriage from Clark to Zulime, and that his proposals were accepted, provided the evidence of the bigamy of DeGrange could be found there. Zulime and Madame Despau visited the North for that purpose. This statement shows that this movement was prompted by, and of interest to Clark, and we find Clark making a corresponding movement on his part. They meet in Philadelphia, and probably pass the winter and spring together.

This statement, then, affords the reason for the secrecy of the marriage. It was necessary for the marriage with DeGrange to be legally annulled before a second marriage would have been proper. This was the reason given by Clark, and the sufficiency of which was acquiesced in by Zulime. It is probable that she subsequently adopted the idea that this marriage had no legal obligation or validity, from the fact that a previous nullity had not been declared of her marriage with DeGrange.

The continental law of Europe corresponds with the statement of Clark to her. The ascertainment of the bigamy of DeGrange by some direct proceeding, is declared to be proper by the writers on that law, before a second marriage should be contracted. 10 *Path*, 88; *Nougorede jurisprudence*; 9 *Cause's Celeb*, 158; *Du marriage*, 294.

The necessity for obtaining this declaration of nullity, seems to have been constantly impressed on the minds of both parties. Another impression upon the mind of Zulime seems to have exerted the most powerful

influence on her life. The belief that the validity of her marriages could only be manifested by public and authentic registers of marriage. The existence of these impressions on the minds of these parties, seems to account for the conclusion, upon which both appear to have acted at a subsequent period, in reference to the validity of the marriage between them.

The question then occurs, what effect, as evidence, does the subsequent conduct of Daniel Clark and wife produce upon the legitimacy of the plaintiff. The marriage in Pennsylvania was valid, without any declaration of nullity of the marriage between DeGrange and Zulime Carriere. That marriage could not lose its legal character; nor could the offspring of the marriage be deprived of their civil rights by any false impressions of the parties to it, arising from the state of, or their opinions of, the law of their domicil. Lord Eldon has said upon such facts: "I am exceedingly anxious to press upon your lordship's attention, this is what I take to be an indisputable proposition in law, namely, that if you find there was a marriage duly celebrated, actually had, that marriage cannot be got rid of by evidence of facts and circumstances *done* or observed by persons afterwards, thinking it proper to disentangle themselves from the connexion of marriage, actuated by caprice, dislike of each other, or a base motive of inducing other persons to think that they may form matrimonial connexions with the parties. When once you have got clearly to the conclusion that a marriage has been had, that marriage must be sustained, let the consequences be what they may of sustaining it with respect to third persons." 2 *Bligh's Rep.* (*N. S.*) 489.

The French jurists are agreed to this principle. In a cause in which the solemn admissions and oath of the first wife were produced to establish that she was not a wife, and a declaration that her children were bastards, the Advocate General argues: "It is pretended Margaret Dores has renounced her *status*, but without examining if it is her, or a fictitious representative who has spoken in these acts, whether they were prepared or fabricated by her husband, or whether she consented freely, or executed them under a surprise, menace, or through fear of violence, it is sufficient to say this renunciation is vicious and produces no effect. The *status* of a wife is such that she cannot dispose of it.—All the efforts to weaken or to impair it are nugatory."

This, then, brings back the question to the inquiry, is the evidence of the marriage sufficient?

The defendants, to weaken the force of the testimony of Madame Despau, have assailed her character.—We have seen that without her testimony the plaintiff's case is established. The assaults upon her character have not been made by any evidence which the law recognises. The only question which can be raised upon her character is whether at the time of her deposition she was entitled to credit as a witness. On this question not an inquiry has been made.

The witnesses (chiefly those who were conversant with the gossip in relation to Clark's impotence,) are interrogated as to Madame Despau's reputation. Carraby says nothing good was said of her. Tricou says, "her reputation was on the same footing as that of Madame DeGrange." The two daughters of Gardette place her in the same category as her sister. Courcelle answers to the same effect; and each testify that the reports were unfavorable to Zulime.

This is the character of the evidence which the resources and industry of the defendants have been able to secure, to impeach the veracity of this witness. As to the legal quality of the evidence, the Court will observe that it relates to character a ta period more than forty years before the deposition was given. That it relates in no degree to the only issue that can be made on the character of a witness—that of veracity. That it establishes no reputation in regard to veracity—that the evidence is wholly illegal. *Phillip Ev.*, 291, 292; 13 *John Rep.*, 504; *Hill & Cowen Notes*, 768; 3 *Serg. & R.*, 337; *Green, Ev.*

The Court cannot fail to notice that every imputation upon Zulime Carriere has its origin in and during the connexion between her and Daniel Clark, and the deplorable consequences of the concealment of the lawful character of that connexion. That so soon as that connexion was ended, the tongue of slander ceased to wag. The Court is advised, too, in the evidence, that there were malicious influences at work to set that tongue in motion.

In reference to Madame Despau, no witness could have been better sustained. She has been followed from place to place, and her life examined for the last forty years, and with a single result—a result which secures her from disparagement in this tribunal.

The defendants having betrayed their weakness in the attack upon Mad. Despau's character from the reputation of witnesses, have sought to fortify themselves by a record of some proceedings between herself and husband.

It appears that Madame Despau and her husband lived unhappily together, and agreed to a divorce. Pending these proceedings to carry their agreement into effect, the husband advertises his property for sale. The wife enjoins the sale, claiming a community. The husband answers and prays the property may be sold, and he be allowed to give bond to deposit the proceeds with a responsible person. This is allowed.

More than a year after this, a petition, not supported by oath, is filed, in which Madame Despau is charged to have gone to North America without the consent of the husband, and that she is living in adultery. Supplemental affidavits are filed to the effect that Madame Despau had left the territory, and one affidavit declares that her conduct had not been very regular, and her husband had just reason to complain of her. In what respect, the affidavit does not state. The decree of the court was made without the service of any process or upon any appearance of the parties to the petition upon the proofs contained in these exparte affidavits.

The decree is that the wife has forfeited her community. The ground of the decree is not declared.

It is certainly not necessary for me to state to this court, that such a record is not admissible to impeach a witness, even if the court had proceeded legally. That such a judgment can have no effect upon the character of a witness in any court.

Thus far, I trust, I have satisfactorily shown to this court what is the language and meaning of the code of 1808, in reference to affiliation, and that this case fully meets all the requirements of that law. On this subject, the testimony on the record stands intact. Not a breach can be made in it. It all tends irresistibly to the conclusion that the complainant is the legitimate offspring of Daniel Clark. No other parentage has been assigned her. All the witnesses concur on this

point, except the Chevalier De la Croix, and how does his testimony stand before this court? It has been discredited, set aside, and entirely disregarded by the Supreme Court. An examination of his two separate depositions, on the record, will show that the strictures in which the Court indulged in reference to his testimony are fully justified. In his testimony before the Probate Court, he says Clark spoke to him, (De la Croix) on his plantation, of his becoming his executor; he also spoke of a young female, then in the family of Captain Davis, named Myra, desiring that De la Croix would act as her tutor, and that he (Clark) would leave her a sufficient fortune to do away with the stain of her birth. Here, he says nothing about her being his daughter. Subsequently he enlarges his statement, and now, in the testimony before the court, rehabilitates himself,— makes his testimony broader, and speaks of Myra as the bastard and illegitimate daughter of Clark, and refers to several conversations with Clark on this subject. These discrepancies, so striking and positive, justified the Supreme Court in throwing discredit upon this testimony. I therefore leave the Chevalier De la Croix entirely out of the case, as if his testimony had never been taken.

Here, then, we have a complete and compact mass of testimony, showing the repeated public acknowledgments of the legitimacy of this child by Clark—solemn acknowledgments, made shortly before his death. We have proof of the marriage—of cohabitation. The mother is certain and undisputed, and the father is rendered certain by presumptions, which Starkie calls "infallible proofs." And now we have fulfilled the requisites of the decision of the Supreme Courts, and thrown upon the defendants the burden of disproving this marriage, and the legitimacy of complainant. No one can read the testimony in relation to the last solemn acknowledgments of Clark—when the shadows of death were gathering around him, when the affairs of this world were fading before his eyes, when he withdraws his mind from the serious concerns of the future, to whisper in the ear of his most intimate friend his last dying injunction to protect and guard his legitimate child—without being satisfied on this point. These solemn circumstances add a force and gravity to the testimony, which leave nothing but the absolute conviction of the legitimacy of this child.

But we are told that there was an existing marriage, constituting an insurmountable barrier to the marriage from which the complainant sprung—that she had another husband living. That Zulime had been married to a man named DeGrange previous to the marriage with Clark, is fully admitted; but it is equally clear that such marriage was void *ab initio*, by virtue of DeGrange's marriage with Madame D'Orsi. The proceedings in the suit in 1806 against the name of DeGrange, are conclusive on this point. The decision then rendered is *res judicata* of the previous marriage.

On this point I beg to refer to the leading case of the Dutchess of Kingston, (20 *State Trials*, 598,) where it was determined that a judgment delivered in a court of competent jurisdiction, is admissible as evidence in another court, in relation to a marriage whose validity is brought up in that court. The record of the previous proceedings of a divorce between Miss Chudleigh, afterwards the Dutchess of Kingston, was admitted as proof in a prosecution for bigamy before the House of Lords. So, too, (in a case in 8 *Modern Reports*,) it was distinctly decided that the adjudication of a court upon the validity of a marriage would be conclusive in any other court, even when legitimacy was involved. Suppose DeGrange had died after his marriage with Zulime, can there be a doubt that his property would have gone to his children by Barbara D'Orsi? In the case of McGregor —— it is fully decided that a previous marriage makes a subsequent one void *ipso facto*. It requires no decree of invalidity, no sentence of a court, because it never had any force or existence. Marriages are void, or voidable. For example, a marriage may be avoided on grounds of near relationship, the taking the veil, or impotency, during the lifetime of the parties, though not afterwards; but a marriage between parties, one of whom has a spouse living, is absolutely void from the beginning. A marriage, according to the canon law, can only exist between one man and one woman. The second marriage, under the English law, conferred no rights whatever, and the children were bastards; but, on the continent, if either of the parties had been deceived, the children were not necessarily illegitimate. On these points, (2 *Fillimore*, p. 16, and *Pothier on Marriage*.) The position, therefore, of Mr. Mazureau, so much relied on by Col. Preston, is not sound law.

The facts in the cause establish conclusively the existence of the previous marriage of DeGrange. The parties' own confession, his flight and escape from the country, and, finally, the marriage certificate. It results that Zulime Carriere possessed the capacity of contracting a marriage with Daniel Clark, which marriage we have shown did take place.

We come now to the record of the Ecclesiastics Court, upon which the defendants mainly rely, to disprove the fact of DeGrange's bigamy. Now, even if this record could be admitted as proof, the judgment by no means supports the conclusion of defendants, as it is a mere judgment of suspension of proof and further proceedings. It is ordered that further proceedings be suspended, with power to prosecute hereafter. This has none of the force of *res judicata*, a final decree. But even if it were such a judgment, it would not be proof in another suit. If it had been a verdict of acquittal by a jury, it would not be admissible as evidence in another suit involving the rights of property. See 1 Starkie 278, 1 Phillip. 338. There is a broad distinction in this respect between the effects of a conviction and an acquittal.

But it is contended that if not admissible as a judgment, the declarations of the parties are good as evidence. In reply, we invoke the rule *res inter alios acta*. These depositions were received in a proceeding *post litem motam*, a proceeding neither criminal nor civil, but of the nature of an *ex parte* inquiry, in which it is not proved that the witnesses spoke under the sanction of an oath, and exposed to the penalties of perjury. And who were these witnesses? There is Jerome DeGrange himself. Surely it will not be pretended that his testimony to his own innocence of a crime which exposed him to death, is entitled to the slightest weight. He certainly will not be permitted to make testimony for himself. Madame D'Orsi, too, is exposed to the same objection, for she states in her deposition, that since her separation from DeGrange she had married; she had, therefore, the same interest which DeGrange had, to disprove his bigamy. And lastly, we have the testimony of Madame DeGrange,

who was surrounded by circumstances and influences which nature could not resist, prompting her to save the father of her children from an ignominious death, and her family and name from the stain of a public execution. These depositions, therefore, possess no weight whatever as evidence, even if they were admissible in this case. Colonel Preston has stated that the value of this evidence was incalculable. Babbage's calculating machine could not estimate its weight and influence in this trial. I think, to ascertain its real value, that we shall have to look beyond the point where numbers lose their relations—to look from the infinite to the infinitessimal—from the maximum to the minimum. Approach this record, as men of sense, and you are compelled to throw it aside as belonging to the class *de minimis lex non curat*.

I feel mortified to have to refer so frequently, and at such length, to matters so clear and palpable. I am continually reminded of Chief Justice Marshall's remark, that the Court ought to be presumed to know something. Of this class of unimportant and I might almost say, frivolous grounds of defence in this case, is the Alimony suit instituted by Madame DeGrange, in which her lawyers style her the wife of DeGrange. Is it seriously pretended that this allegation can prove anything in this suit except the fact that such a suit was brought, such proceedings were had, and such judgment was rendered? It is well settled that no pleadings or declarations can be evidence in another suit. Parties who are usually represented by lawyers put anything in their petitions they see fit. It would be a desperate extremity, says a high authority, to hold parties responsible for what their counsel put in their pleadings. Bills of Equity are notoriously filled with fictions, and it is well settled law that their allegations cannot be admitted as proof in another suit. No one would pretend that this record could be proof of the marriage of Zulime and DeGrange, because the judgment would not be one on that point. This record, therefore, simply proves the fact that alimony was sued for and obtained. Similar in character is the suit brought for alimony in the name of this complainant, in which her curator, Davis, sets forth that she is a natural child—in which is publicly asserted her illegitimacy. Such proceedings would, not be evidence even against Davis, much less can they be held against the infant whom he pretended to represent. So, too, of Mrs. Barnes's answer, which has been dragged into this case. That, too, is entirely inadmissible and irrelevant. Under the rules and decisions of this Court, such records must be entirely disregarded.

Thus, then, may it please the Court, is every barrier to the marriage of Clark and Zulime removed. All the evidence to invalidate this conclusion is incompetent—it consists of mere excrescences of proof, and the capacity of these parties to contract marriage is satisfactorily established. We have proved that the parties were legally married. But though there was no legal barrier—there was a barrier in public opinion, in strict propriety, in that refined delicacy of the Canon law, which enjoins that it is better not to contract a new marriage until the old one is dissolved by a judgment of a Court. They formed the marriage, and from a fear of public sentiment and delicacy, kept it a secret. Colonel Preston has entertained the Court with large drafts from the Spanish law, to show that clandestine marriages were invalid. This is altogether an inaccurate account of this matter. According to the Spanish law, marriages were required to be celebrated in public by a Priest before witnesses, and persons entering into clandestine marriages were subjected to severe penalties—but so far from such marriages being invalid, I shall show that Col. Preston exposes himself to the anathemas of the Holy church, by even pretending that such marriages are ivalid. (Read a decree from the Council of Trent, to the effect that though the parties to a clandestine marriage were punishable criminally, yet, whoever should attempt to set aside the same, shall be anathematized.) So much for the invalidity of clandestine marriages. But the marriage, in this case, took place in Philadelphia, and must be governed by the laws of Pennsylvania, where it would have been valid though the ceremony was not performed by a Court or in the presence of witnesses.

Thus have I shown an unbroken chain of evidence, reaching from the birth of this child to the death of Clark, to establish the legitimacy. However unfaithful Clark may have been to the unfortunate Zulime, he has left abundant proofs of his paternal disposition towards this child. He always had a distinct vision of her rights. No beguilement, no fact, no incident can be found in his history to contradict the presumption that this complainant was born in conjugal union. Throw all the other evidence aside, the birth, acknowledgments, education—the will, so vilely suppressed, and the many other circumstances supporting the claims of complainant—and put this case upon the testimony of Mesdames Despau and Caillavet, and it is amply sufficient to establish the legitimacy of the complainant. It would be sufficient, if she had been picked up in the streets, or thrown into a Foundling Asylum, and there permitted to live, until she had attained full age, with no acknowledgment of her parent, or further proof than the testimony of Mesdames Despau and Caillavet.

To contradict this state of the facts, the counsel for the defence have indulged in much invective. Among other propositions equally inadmissible, it has been the favorite theme of some of the counsel, that the vast difference in the fortune and condition of Clark and Zulime forbade their marrige. To ascertain the force of this argument it will be necessary to recur to the period when these transactions took place. The marriage occurred in the spring of 1802. At that time New Orleans was a small town, the capital of a Spanish Province. It was governed by that most debased of all Governments,—that of a Spanish Viceroy, far removed from the mother country. Corruption ruled the day, and the greatest laxity of morals prevailed among the people. Into such a colony as this was Daniel Clark thrown, full of strong passions and ambition. It is in proof that he was a dissipated man, fond of pleasure and gaiety. Nor does it appear that the mercantile circle in which Clark revolved was remarkable for strict propriety and high honor. The letters in this case, passing between Clark, Coxe, Chew and Relf, show that these gentlemen were not over scrupulous in respect to their transactions. Frequent allusions occur in the voluminous correspondence on file, to the bribing of Spanish officers, cheating the custom house, smuggling, trading under false papers, circulating and suppressing reports of a political nature, to effect the

markets, &c. I would call particular attention to the letter of Coxe, written in the handwriting of Clark, to Chew and Relf, advising them to remove the contents from certain casks on deposit in the New Orleans custom house, and take them out of the back door, by bribing certain officers, filling up the empty casks with cheap crockery, etc.

MR. DUNCAN.—That was the conduct of your own client's father; what had Chew and Relf to do with it?

MR. CAMPBELL.—It does not appear that Chew and Relf expressed any great indignation at the suggestion. Such was the state of morals at that time. It is also in proof, that Clark was an ardent, impulsive, passionate man. Zulime is described by all the witnesses as being very beautiful. Her family and connexions were highly respectable. Madame Caillavet, one of her sisters, and a witness in this case, has reached even now an advanced age, and her reputation has never been sullied by the breath of suspicion. Her history has defied even the inquisitive malice of Relf. Madame Despau, too, at that time was married very respectably, and it appears possessed a good property. At that time then, and in this situation of the parties, what great difference existed in the relative position of Clark and Zulime, which would render their marriage a discordant and incongruous one? It is to that time, 1802, that we are to confine our views as to the probability of this marriage. But after, this the relative positions of the parties were essentially changed. The cession takes place. Clark gains great distinction from his connexion with that interesting event. He becomes a citizen of a Republic, by whom his talents are held in high regard. He rises to the distinguished post of first representative in Congress from the new State of Louisiana. In Washington he attracts much consideration, is courted by the President and members of the Cabinet, mingles with the best society of the land—becomes a man of fashion, the intimate friend of Robert Goodloe Harper, to whom he lends money. And now he is quite a different man from what he was in 1802. Now he makes difficulties in the way of acknowledging his marriage to Zulime. Other and more brilliant connections have excited his ambition. He looks higher, and the poor Zulime has ceased to be a proper match for him. She, poor creature, has in the meantime descended in the scale of respectability. She has kept her marriage with Clark a secret, whilst continuing her connection with him, and has consequently fallen into disrepute. Confining our view to that period, the counsel may well say that there was a considerable incompatibility between them; that their positions were not such as to render their union a probable event. But we are to look beyond this—to the year 1802, and contemplate the position of the parties. A beautiful woman, much admired and courted by the young men of the country, she attracts the admiration of Clark, who is too honorable and high-spirited a man to meditate her seduction: or who, even if prompted by the loose ideas of the times to propose an illicit intercourse, would have been rejected by one occupying the respectable position of Zulime,—under such circumstances, is there any improbability, founded upon the condition and relations of the parties, of the marriage of Clark and Zulime?

I come now to the matter of dates, in which the counsel for the defence attempt to show that it was impossible that these parties could have met in Philadelphia at the time indicated. Their chief reliance is on Coxe's deposition. Coxe speaks of Clark's being in Philadelphia in April and July, 1802. Now, by referring to the letters, it will be seen that on 7th Nov., 1801, Chew and Relf write that Clark had left New Orleans for Philadelphia. On 18th January, 1802, we find Clark in Philadelphia, writing a running letter to Chew and Relf, which is signed by Coxe. On 23d April, 1802, it appears that Clark left Philadelphia, to return to New Orleans. From 2d to 9th March, we have on file a running letter from Clark to Chew and Relf; and there is a letter of Coxe's, stating that Clark left on the 23d April. Now, where was Zulime at this time? She is here on 9th November, 1801; she leaves shortly afterwards for Philadelphia, where she arrives, according to Coxe's testimony, in the early part of the year 1802. She goes first to New York, to get proof of DeGrange's former marriage; failing in this, she returns to Philadelphia, where, no doubt, the marriage then took place. There is, then, no incompatibility of dates—no difficulty whatever of assigning the proper time when this marriage occurred, or of bringing the parties together, so that it could occur.

Connected with this branch of the subject, is a consideration, to which I shall advert briefly, without dwelling upon it at much length. In the relations existing between Clark and Coxe, the latter seems to have occupied the position of a mentor, who assumed a lordly tone towards Clark, reproving his follies, checking his extravagances, and counseling him in his affairs, with almost a paternal assumption. Now, such being the relations of the parties, is it at all probable that Clark would consign his mistress to his sedate counsellor, Coxe? Coxe was a demure, well-conditioned, decorous man, whom Clark always approaches with respect,—never failing in his letters to tender his respects to Mrs. Coxe, and to observe a nice regard for all the proprieties. Now, is it within the range of the faintest probabilities, that Clark would select such a man as Daniel W. Coxe, to superintend the accouchement of his adulterous bastard,—the patron and protector of his cast-off concubine? No; they might swear it a thousand times, and against such a monstrous pretension, we should be compelled to take refuge in credulity. We should no longer entertain any doubts of the competency and sufficiency of the testimony of one witness, to an event thus rendered probable by circumstances of so strong a nature as this.

I think it has not only been satisfactorily shown that a marriage took place between Clark and the mother of this complainant, but also that there were strong reasons for concealing such marriage and keeping it a secret. The marriage being proved, no subsequent acts of the party could affect the *status* of the child. The law takes this matter in its own hands. It does not allow the caprices or passions of individuals to dispossess a child of the *status* in which it is placed. It may have been the pride of Clark, or the policy of Zulime, to conceal the fact that this child was born in conjugal union, but the law comes in to correct the consequence of their errors, and to protect and establish the true condition of their child.

The defendants in this case further set up the plea of *bona fide* purchasers. But it is clear that such a plea is not good in opposition to a title created by law. The legal title being once established, under the dispositions of the law, no subsequent acquisitions can invade

that right. A party cannot transmit a greater right than he possesses. The purchasers of the estate of Daniel Clark never dispossessed the heir of her legal rights, and those who hold under them, have acquired no further title than their vendors possessed. [On this point Mr. Campbell cited numerous authorities. He then proceeded to argue that the parties must set up and prove possession and payment, which had not been done in this case. He referred to the pretended partnership of Chew and Relf with Clark, and the suspicious variation in the act of partnership, which, he said, was a mere executory contract, which had never been carried into effect. He also charged Relf with an attempt to corrupt the testimony in the case by his letters to Bellechasse, from whom he hoped also to snatch the remnant of property, which had been placed by the assignment to Bellechasse, beyond his reach. He referred also, cursorily, to the plea of prescription as not being applicable to the case, and concluded as follows:]

Thus, may it please your Honors, have we established the *status* of this child, and shown that the defendants are not protected by any law from the consequences of that *status*, to wit: the recovery of the property of Daniel Clark, belonging to him at the time of his death. We have proved to you that Clark did make a will in 1813, that he showed it to his friends, and frequently spoke of its provisions as being intended for the benefit of this complainant. When that will had been made, just as the breath was passing from Clark's body, Relf gathered up the keys, and was seen in the room where the will was indicated by Clark as having been placed. We have shown that Relf made a variation in the act of partnership of 1820, and that he sought, through his correspondence with Bellechasse, to defraud the estate, and corrupt the testimony so as to prevent the recognition of this complainant's rights. And now we think a case of fraud is made out, which the subsequent purchasers must inherit. They sit in the seat of their grantor; they are affected by all the previous frauds and misconduct of their vendors. They must restore the property of which this complainant has been so unlawfully dispossessed, and thus terminate the long period of privation, of suffering, of toil, and persecution, to which she has been exposed in the wearisome and exhausting prosecution of her rights.

ARGUMENT OF GREER B. DUNCAN,

For Defendants.

One of the Judges of this honorable Court having expressed a desire that we should show wherein this case differs from that of Patterson's, I shall proceed to consider that case in two aspects. First: as to the facts in the record, and the circumstances connected with its concoction; its fraudulent design and unlawful purpose, so far as the parties to it were concerned. Secondly: the law of the case, *per se*, and as differing from the present case. The proofs and trial in the Patterson case were collusive; the proofs in this case are taken in real contestation, and the trial will be one of fair and open battle. There are no previous agreements or understandings in this case. There is no more in common between the two cases, than there is between righteousness and fraud—between honor and disgrace—between virtue and vice—between light and darkness—between honesty and crime—between heaven and hades.

What are the facts? A suit is instituted against fifty and more persons in the same Bill in Chancery—Patterson being one of them. The principal defendants were the executors, and old friends of Clark, Chew and Relf. All the other defendants, who derived their title from them, naturally looked up to them, and consulted with them on their defence. Patterson withdrew from the other defendants—went to trial alone, without even advising his co-defendants of his intention, or asking their coöperation; and now, it is pretended that the other defendants are bound by the judgment rendered against him. In 1840, whilst defendants were engaged in consultations on their defence of this case—on 21st April, Patterson breaks loose from forty co-defendants—dismisses his then counsel—engages another not before employed in it—on 21st April, 1840, files an answer. To this answer there was no replication. Two days after the case is brought to trial. On the next day, 24th April, trial closed, and the case was taken under consideration by the Court. On 25th April, 1840, two papers were filed in the case, one being a supplemental answer of defendant—thus patching up their case after it has gone to the Court. On the same day the decree of the Court is rendered; on the same day it is signed. This decree was written by the counsel for complainant—it is in his handwriting, and was handed up to the Judge the day before it was entered up and signed. The Court grants the prayer of defendant for an appeal—by agreement of parties, bond and security are dispensed with; Patterson expressly waives and dispenses with other parties to the hearing, or decision. It is necessary to discharge Preston, who would not coöperate in such an arrangement; the parties, too, must not appear too loving; they must make a show of fight. The consideration of this agreement with Patterson is the security of his property—the quiet of his possessions. The proofs develop the whole conspiracy. Patterson tells us the property continues to be his. Complainants have promised never to disturb him. The object in view was not Patterson's small lot,—it was to forstall the opinion of this Court; they expected points to be adjudicated against these defendants without their having had the advantage of a hearing; they expected to alarm other defendants, to procure compromises, and to excite the cupidity of adventurers and capitalists. The charges, in this case, between these friendly parties are very serious—on the complainants' side, fraud is charged against defendant,—and the latter responds by impugning the virtue of complainant's mother. Yet, how friendly, agreeable and complacent they are! Patterson proves that Mrs Gaines promised not to take the property from him which she had recovered; she gave him a writing to that effect,—General Gaines and wife paid the costs of the proceeding. He says, too, that interviews were held between them—frequent interviews. The same offer was made to Judge Martin, who indignantly declined it. Defendant is indemnified against all fees and costs. Neither he nor his counsel ever consulted with the other defendants. The very testimony upon which the opinion of the Supreme Court is founded, is not filed in the Circuit Court until the lapse of at least one hundred and ten days after the decree was made final in the Circuit Court. There is, therefore, nothing in common between this and Patterson's case.

Again: the answer of Patterson was put in not un-

der oath. This fact is a prominent feature, in the opinion of the Supreme Court. 6 Howard, 584. The Supreme Court express their surprise that the case was tried as it was, "at the earnest desire of both parties;" that no suggestion was made in the court below that it would direct an issue to be made for the trial of the legitimacy of Mrs. Gaines by a jury. 6 Howard, 584. In this respect, too, our case differs from that of Patterson. Our answer is under oath. In the Patterson case Madame Despau, the witness to the marriage, stands, says the Supreme Court, uncontradicted and unimpeached. We have shown that Madame Despau is not a witness to the truth, and is not to be believed. The decision of the Supreme Court of the United States may be made a subject of criticism and examination, especially in cases depending either upon general principles of civil law or the textual provisions of our code, there being no civilian on the bench. The case of Galt *et al vs.* Galoway *et al*, 4 Peters, 344, is an illustration of one of the errors into which our Supreme Court falls through ignorance of the State jurisprudence. In that case it was decided that a sale made by an agent was not good because the principal was dead before the act was done. This would not be good law in Louisiana. Suppose such a case were to arise in this State, would not the court be bound to decree according to our jurisprudence? To declare that the Supreme Court would not correct an error when convinced of it, would be a gross contempt of court.

The following reasons are urged why this court should review and correct the errors in the Patterson case: 1. The judgment was rendered by but five judges, not one of whom was conversant with civil law. 2. The court was not aided on either side by a lawyer who had ever practiced law in Louisiana. 3. On a late occasion, a judge of the Supreme Court, in giving a dissenting opinion in a Louisiana case, declared most solemnly that if the opinion in question had not been pronounced by his brother judges, he should not have supposed there could have been any difficulty in the question. In the Patterson case, as the evidence was arranged, I see not how the court could have reached any other conclusion. 4. One of the judges of the same court giving his own and the opinion of the Circuit Judge, now sitting in this case, declares it to be unjust to either party to determine a case relative to the title of a fragment of a large grant, when all the parties to be affected by such decision are not before the court.

This case, therefore, ought to be heard, without reference to the Patterson case. We have shown that that case was a fraud, and this complainant ought not to profit by her wrong. It is to be regretted that we have not the ancient writ of "Leproso Amovendo," to extirpate this case from the records of this court.

Since the decision in the Patterson case, the plaintiff has amended her pleadings, and set up that judgment as a fact, to which we respond that it was a fraud. We denounced it as an unclean thing,—that it was not a fair trial, even between the parties,—that the court was imposed upon.

In the Patterson case, the court decided that the testimony of Madame Despau, being sustained by corroborating circumstances, must outweigh the answer of defendants under oath. We show that Madame Despau cannot be received as a channel of truth,—that she is not corroborated, and that she is contradicted by every well attested fact in the record.

Let us proceed to an examination of this case: 1st. Was Daniel Clark ever married to Zulime, née Carriere? We hold the negative; the complainant, holding the affirmative, must prove it. This is the more incumbent, as the pretended marriage was kept a secret from the world, and was not manifested by the usual evidences of such facts in all Christian lands.

Madame Despau swears positively that they were married. Is it not strange that there should be no other evidence of such a fact in the history of a man like Daniel Clark?—no evidence of his intimate friends—nothing during the twelve years after it occurred, amidst his family and friendly letters, which are as abundant as the leaves of the forest, having the most distant reference to this important fact? Let us examine Madame Despau, whose statement, under oath, is opposed by that of the defendants also under oath.

In equity, the answer of the defendant is conclusive in his favor, unless overcome by testimony of two opposing witnesses; or, of one witness swearing positively, and such other facts as are equal to the unqualified testimony of another witness. Story's Equity, vol. 2, 743[illegible]; 2 Ak., 19-140; 1 Vesay, 97; 1 Johns, Chan., 459-462, and other authorities.

The witness Despau was examined under oath in June, 1803. Then she answers without hesitation that Clark was married in Philadelphia in 1803, by a Catholic priest, and that she was present at the marriage. On 16th October, 1845, she is again examined. It is a powerful instrument in the investigation of truth, to compare statements made by different witnesses at different times, and see if they agree in material points. If there are small differences in the accounts of the same transaction, it is considered by the best writers as indicating the absence of collusion; on the other hand, when there is a striking similitude in the very language of the witnesses, it raises a suspicion of collusion. The two depositions of Madame Despau, taken six years apart, and before different magistrates, not only agree in general facts, but the very same language is employed by her. In this there was either collusion or a miracle. The inference is irresistible, that she had taken advantage of the publication of her testimony. It was no doubt prepared for her, and she signed it, the magistrate who took the same abusing the trust and confidence of this court. All the facts show that there was deliberation and preconcert in this testimony, and that it was a family affair.

The original bill in this case was filed 28th July, 1836. On 11th December, 1848, the last amended bill was filed. Thus they had thirteen years and over four months to conform their averments to their effects. And yet, in their amended bill, we find this clause: "That the said Daniel Clark was lawfully married with Zulime, née Carriere, at the city of Philadelphia, in the State of Pennsylvania, in or about the latter part of the year 1802, or the early part of the year 1803."

Here is a considerable margin reserved. Of this I shall not complain, but allow them the grace of six months, making our field of inquiry from 1st of October, 1802, to 1st April, 1803. This is a liberal concession, considering that the complainant has been aided by her mother, who could hardly have forgotten

that most memorable of all days in a woman's life—that of her marriage. We take issue on this point, and aver that Clark was not married to Zulime Carriere in 1802. Madame Despau's testimony, which had been previously taken, fixed definitely the time of this marriage; but in 1849, the complainant having penetrated the muniments of the defendants, deems it proper to take the testimony of Madame Despau. How does she answer these interrogatories? She repeats the old story with an essential variation. She now, on the 19th of March, 1849, swears, "I was present at this marriage. This, to the best of my recollection, was in the year 1803; although there are some associations in my memory, which make me think it not improbable that the marriage may have taken place in the year 1802. My impression, however, is that the marriage took place in the year 1803. It was, I remember, a short while previous to Clark's going to Europe."

Is not this a cunningly devised effort to save a witness. In her two previous depositions she swore positively it was in 1803, now *she believes* it was in 1803, and refers to "associations," etc. In 1839 and 1845, we hear nothing of these associations. Who put this notion in her head in 1849? I answer, it had been discovered by complainant that we should prove that Clark had been in Philadelphia in 1802, but *not in the latter part*, or in any part of 1803. Hence the necessity for this answer, to retreat from her former position, and at the same time to do it in such a delicate manner, and with such tact as to appear to glide naturally towards the truth. But even this, her last retreat will, I apprehend, prove an *ignis fatuus* to the complainants, leading them into a morass from which they cannot escape.

The parties must be held to their pleadings. Madame Despau still adheres to 1803, though she states the marriage was previous to a certain fact, which she must have known rendered the other statement utterly untrue. Clark left New Orleans for Europe via Philadelphia, in June, 1802. He was in New Orleans, 15th of June. He arrived at Wilmington 20th July, 1802. Here he was detained in quarantine five or six days. He was then on his way to Europe, about a business which gave him great distress of mind. On arriving at Philadelphia, Coxe says he commenced making preparations for an immediate departure for New York, whence he would proceed to Europe. Coxe writes to Chew and Relf from Philadelphia, 6th August, 1802, that Clark was to leave the next day for New York. Clark writes to Chew and Relf from New York, on 13th August, 1802, that he would leave the Tuesday following, which would be 17th August. Coxe, therefore, was very near the fact, when he stated that Clark left previous to the middle of August. Clark, then, was in New Orleans from 1st to 27th June, 1802, and after that time was not in Philadelphia, except from 28th July to 7th of August, or ten days. Is it to be believed that in that time, he satisfied himself of the invalidity of Zulime's previous marriage with DeGrange, had the marriage ceremony performed, as testified by Madame Despau, kept it unknown to his friends—then abandoned his wife, without mentioning the fact to his family, his mother and sisters, but leaving the poor stranger alone and unfriended, in a foreign country.

I have shown that within the last six months of 1802, Clark was in Philadelphia. I will hereafter show that those were the only six months he was there, and that he could not have been married to Zulime at that time, for the very good reason that she was not there.

Clark sails for London, 17th August, 1802. On the 7th October he writes from Liverpool. On the 13th and 22d of October, he writes from London. On the 16th of November, he writes from Paris. On the 23d December, 1802, he writes from the River Mersey. It is clearly proved, that he sailed direct from England to New Orleans. R. D. Shepherd says he knows Clark arrived here in mid winter, in 1802-3, in a vessel direct from Europe. The same fact is proved by Coxe. In a letter, in 1807, Clark refers to his return from Europe as occurring in March, 1803. In the face of such testimony as all this, what is the declaration of Madame Despau worth, when she swears before this Court, that she saw Daniel Clark, in Philadelphia, in the latter part of the year 1802 or the commencement of 1803.

To make this matter still clearer, we will show that Clark was in Philadelphia during no part of 1803. Coxe and Clark were old, intimate friends; they were acquainted from 1791 till 1813, the time of Clark's death; they were partners from 1792 to 1811. When Clark went to Philadelphia, he was always the guest of Coxe. In 1802, Clark confided to Coxe his mortifying connexion with Madame DeGrange, and entrusted her to his care during her accouchement. He consulted Clark in relation to his anticipated marriage with a lady of high family connexions.

Clark could not have been in Philadelphia, without Coxe knowing it; and Coxe positively asserts he was not there during any part of that year. But, on this point, let Clark speak for himself. He has been in his grave for thirty-seven years; but I summon him back to rebuke this ill-planned conspiracy against his good name and character.

[Mr. Duncan here sketched, with graphic ability, the political situation of affairs in this country, just previous to the cession of Louisiana, by France; and dwelt upon the serious duties imposed upon Clark, who was then American Consul, to remain at his post here, watching the progress of events.]

The records of the office of Secretary of State, show that there were seventy-two letters on file from Clark, but two of which were in 1802—one the 1st and one the 22d June, 1802. There are no more from him, until 23d December, 1802, when he writes from the River Mersey, to Mr. Madison. His next letter is dated New Orleans, 8th March, 1803, and so on his letters follow one another, at a few days interval, through the whole year, 1803; but one, that came from Natchez, being written out of New Orleans.

It is, therefore, shown by his own works that it was impossible for Clark to have been in Philadelphia, in 1803. Was testimony ever more crushing, more desolating, more terrible upon a witness, who has sworn more than once that Clark was married in her presence, in Philadelphia, 1803?

[Mr. Duncan then proceeded to examine the record of the divorce suit of M. Despau against his wife, the witness—showing that she admitted the allegations made against her by her husband. Several cross suits arose out of this affair, until finally, February 8, 1808, the husband files an amended petition, alleging that his wife had utterly forsaken her children:

"That the depraved conduct of Sophia Carrière still continue to lead on by scandalously setting out from this Territory, where she left her children to the care of nobody, entitle your petitioner to pray your Honorable Court to render void the conservatory opposition formed, *in consequence, in spite of all laws and regulations, her leading a wandering* AND RAMBLING LIFE, WITHOUT ANY REGARD FOR THE PRINCIPLES OF HONOR AND DECENCY—LIVING IN OPEN ADULTERY."]

Under that noble and venerable system of laws upon which our present system rests, the facts alleged here against the wife, if proved, worked a forfeiture of all her marital rights. Accordingly, on February 12, 1808, we find a judgment of forfeiture entered up against said Sophia Carrière (Madame Despau) by that man who was equally prompt on the battle field to repel an invading foe, and energetic in the discharge of his judicial duties, the incorruptible Joshua Lewis.

Is this woman, thus described by her own husband, and thus condemned by Judge Lewis, to be believed in opposition to a man of Daniel Clark's high and honorable bearing? In confirmation of this record, we have the testimony of Stephen Carraby, of Madame Ducornau, née Villeré, one of the best families in Louisiana, of P. J. Tricou, of Madame Duchanfour, the stepdaughter of the complainant's mother, of Madame Bournos, of M. Courcelles, of Mrs. Watkins, widow of the distinguished physician,—H. J. Domingo, who knew both the sisters as *femmes gallantes*. Such is the character of the witness who is brought forward to swear away the characters of high-minded and honorable men, who have lived in this community for upwards of fifty years, without spot or blemish upon their reputations—reputations made by honest, careful, attentive regard to their own respective business and occupations. This is the character of the witness presented here to swear away the property of men who have acquired it by hard industry, as the fruits of enterprise and economy, to be given with their own untarnished names to their children, who are to occupy their places.

I have thus far shown that the fact asserted by complainant's chief witness, and which is the pivot of her case, that Clark was married in 1803, is utterly unfounded,—is contradicted by Clark's own acts. I shall now show that this statement of Madame Despau is also contradicted by the acts of the other party to this marriage. [Mr. Duncan here referred to the suit brought by Zulime DeGrange against *her husband*, Jerome, for alimony, in 1805, two years after her pretended marriage with Daniel Clark, which suit she prosecutes to a judgment, and obtains $500 per annum, as alimony, against his estate.] In her petition in this suit, she alleges "she has been barbarously treated by her husband, and likewise that she has been deserted by him for three years past, to wit, from the 2d day of September, 1802, even until this day, although she has been told that the said Jerome DeGrange returned from France to New Orleans, some time in the course of last month, and is now in the city of New Orleans." Thus, we are to take it for granted, that from 14th November, 1794, to 2d September, 1802, Jerome continued to live with Zulime DeGrange, as her husband. There is another suit of Madame DeGrange against her husband, brought 24th June, 1806. The petition cannot be found. The suit was for a divorce, and a decree was rendered in her behalf on the 24th July, 1806. How, then, could she have been the wife of Clark previous to this time? Would the proud Clark have allowed his wife to prosecute such a man as DeGrange for a support?

Fortunately, there is evidence to vindicate the character of the complainant's mother against the blasting imputation which is cast upon her by her own daughter, of having three living husbands at the same time. The Supreme Court, in the Patterson case, says "that the conduct of the parties, in not promulgating their marriage, and not occupying the same house upon their return to New Orleans, &c., would be a good objection, until it has been reasonably accounted for." I think this living of the parties apart is not so difficult to explain as the above transactions of Zulime.

To settle the question of bigamy as to DeGrange, we introduce the records of a prosecution against DeGrange before the Ecclesiastical Court. This was a solemn investigation, under peculiarly impressive circumstances. This trial commenced September 4, 1802. [Mr. Duncan here recapitulated the testimony of Jerome DeGrange, of Madame D'Orsi, Madame Yllar, and Zulime DeGrange, all negativing the charge of bigamy against DeGrange.] The decree of that tribunal dismissed the charge against DeGrange. Madame Despau's story is, that hearing that DeGrange was a married man, they (Zulime and herself) went to New York to get proofs of his previous marriage, which she was unable to do, as the records had been burnt. They went to Philadelphia, where Dr. Gardette, assuring them he had witnessed DeGrange's marriage, the scruples of Zulime were overcome, and she was married to Clark. This was Madame Despau's statement in 1849. Zulime gave quite a different account of it in 1802, when everything was fresh in her memory. She says that about a year before, which would be in 1801, she proceeded to New York to ascertain the truth of the report of DeGrange's bigamy, and whilst there, *she learned* "only that he had courted a woman whose father not consenting to the match, it did not take place." Which of these accounts of the same transaction, at forty-seven years' difference of time, shall we believe? Madame Despau enlarges her story, she says, DeGrange's wife arriving here, he was arrested, tried for bigamy, convicted and imprisoned, and escaped by the connivance of Le Briton D'Orgenois. They cannot get the record proof of these proceedings, because the records were carried off by the Spanish officers after the cession. Even this fact would not allow them to introduce secondary evidence, because if such record existed, either in Spain or Cuba, they were bound to introduce it.

This ecclesiastical record contradicts all these statements. The records in the two suits by Zulime against Jerome, in 1805 and 1806, also contradict this story of DeGrange's flight and escape from the country. What cause had he to fly the country, after his acquittal before the competent Court?

In the suit, in 1805, the citation is returned, served on DeGrange; and Jacob Hart testifies that he was here in 1806–7. It is unfortunate that the petition for divorce, in 1805, cannot be found. It is easy to imagine who had an interest in its destruction. Is it not more probable that the ground of that application was her desertion, rather than the bigamy of which DeGrange, but a few years before, had been acquitted—in fact, on her own testimony? In 1806, they took another trip to the

North, to get proofs of the marriage with Clark—he having refused to promulgate their marriage. Why did she wait for him to promulgate the marriage; why did she not assume the prerogatives of a wife, enter and take possession of the homestead? She had Madame Despau with her to back her pretensions. A Mr. Dorsier, of New Orleans, too, it is said, was present at the marriage. He could prove it. When they get to Philadelphia, they find that the priest, who married Clark and Zulime, had gone to Ireland. What of that! Could they not send to Ireland for his deposition? These are, certainly, very strange people. At one time, Zulime goes to New York, in search of evidence that DeGrange was a married man; and, the consequence is, that in Philadelphia, she falls in with Clark, and marries him. At another time she goes to Philadelphia in search of evidence that Clark was a married man—failing in which, she marries Dr. Gardette. Her missions to Philadelphia seem to have had a very peculiar effect upon her—it seems to have been the very Palace of Venus, in the bower of love. Madame Despau says her sister Zulime was 19 or 20 years of age, when she married Clark. If this event took place in 1803, she must have been but 10 or 11 years old, when she married DeGrange in 1794.

[Mr. Duncan next commented on several of the discrepancies in this testimony.]

Now take up the other sister, Madame Caillavet. In 1849 she testifies that she was intimate with Clark, her intimacy growing out of his marriage with her sister. She was not present at the marriage, but it is within her knowledge, both from information derived from her sisters at the time, and from the statements of Mr. Clark, made to her during his lifetime, that a marriage was solemnized. In her previous deposition, taken May 22, 1835, she says: "The preliminaries of the contemplated marriage were settled by the husband of the witness, at his house, in the year 1802 or 1803, in the presence of witnesses who went to France some time after the said arrangement, but previous to the said marriage alluded to. Witness has constantly resided in France since she went there, and she returned here within the last fifteen days."

How can these statements stand together? She states she heard of Clark's marriage with her sister by a letter received secretly from her sister. She says in another deposition, that she heard it from Clark himself. She says that her sister Zulime heard of DeGrange's bigamy in 1802, and came immediately to reside with her family. Zulime says that in 1802, these reports of DeGrange's bigamy gave her no uneasiness. She says, that to her knowledge, DeGrange's previous wife came to New Orleans, and while there, fully established her pretensions. The pretended wife of DeGrange contradicts all this under-oath. We have a guaranty of this lady's respectability in the fact, that she was then a visitor in one of the best families then or now in Louisiana—that of Bernard Marigny. This witness, Madame Caillavet, flies into a passion about her testimony taken in 1835, before G. Preval, and says it was mistranslated and garbled. The gentleman who took that testimony, speaks the French as his mother tongue. Further, the very fact which she says she did not state on that occasion, as a proof that the deposition was garbled, is not to be found in that deposition.

I come now to the testimony of the defendants. We have proved, 1st, that Clark, during the whole year 1803, was in New Orleans, except the months of January and February, when he was on the seas. 2. We have shown that in September, 1802, Zulime DeGrange acknowledged that she was the wife of Jerome DeGrange. 3. We have shown that the subsequent conduct of Clark and Zulime negatived the presumption that they were ever married. We instance the suit of alimony, the suit for a divorce, brought by Zulime against DeGrange in 1805 and 1806, and finally her marriage with Dr. Gardette, by whom she had three children. If Clark was then living and was married to this complainant's mother, then did she live for twenty years in open adultery with Dr. Gardette. You expose Clark to the imputation of deceiving and abandoning your mother, and finally of imposing her upon Dr. Gardette as an unmarried woman, and you expose your mother to the penalties of the laws of Pennsylvania for the prevention of adultery and fornication. Here we find a terrible and fierce hue and cry against Jerome DeGrange, on the alleged ground that he had imposed himself upon Zulime in marriage, when he had another wife. They say that the community was aroused, the good old Catholic Patriarch of Louisiana, the venerable and venerated Father Antoine, took part in the proceedings. DeGrange was, they say, arrested, cast into prison, from whence he secretly escaped—left the country, and was never heard of again! The monster—the brute!! And yet the same parties wish us to believe that this lady, Madam DeGrange, did the very same thing in 1808, when she married Gardette, having herself then a lawful living husband, Daniel Clark! And yet they come here and appeal to the *equity* of this Court!

3. Her subsequent acts preclude the idea of her having plighted her troth to Daniel Clark. She performed none of the duties of wife—ministered not to his afflictions—attended not his sick and death-bed—she followed not his remains to the grave, and watered it not with her tears. She never sets up any claim as his widow, until a third of a century after Clark was in his grave, when she comes forward before Christy, Notary, records her acceptance of Clark's succession, and on the same day conveys all her rights, as the widow of Daniel Clark, to her daughter, Myra, this complainant, by virtue of which the latter claims a moiety of Clark's estate. This, after she had worn mourning, and claimed her rights as widow of Doctor Gardette! After her marriage with Dr. Gardette, Zulime seems to have fallen into happier influences. Her husband was an honorable man, and exercised over her a proper influence. She became an exemplary wife and mother—she raised a family of children by him—she was introduced into the best society, and was respected by all persons who knew her—she lived with Dr. Gardette until his death, being a period of twenty years, and received all the rights of his widow—she had fully redeemed the faults of her youth. But this does not suffice this complainant, who insists upon her degradation, upon making her children, by Dr. Gardette, "adulterous bastards," to gratify this fell desire for property.

In further confirmation of these facts, which negative the allegation of this marriage, we have the declaration of Zulime to Mr. Coxe, in Philadelphia, when she states that Clark's engagement to Miss Caton was

a violation of his promise to marry her, and that she now considered herself at liberty to marry some one else, alluding, doubtless, to Dr. Gardette, who, at the moment of this disclosure, entered the room. There was no motive for concealment on this occasion!

Can we believe that this woman, who feared so much the contaminating touch of the bigamist, DeGrange, and who, according to her sisters, put herself to so much trouble to secure his conviction and punishment, would rush, herself, into the same horrible crime? No! The circumstances suggest an easy and satisfactory explanation. Clark had, no doubt, in the ardor of his devotions, promised to marry her. She clung to this hope until it was dissipated by his attentions to Miss Caton, when she (Zulime) very prudently and properly married Dr. Gardette.

[Mr. Duncan then proceeded to dwell upon the high and honorable character of Clark, as utterly inconsistent with the act attributed to him of imposing upon a woman and the public; he also referred to the concurrent statement of all the witnesses, that he was always considered in the community a bachelor, concluding that Clark either lived and died unmarried, or else he was one of the most corrupt and dangerous men that Providence had ever suffered to prowl about society to contaminate it with his presence.]

Clark lived for more than ten years after this alleged marriage, and yet there were no proofs whatever of their living together as husband and wife. Madame Despau says he took tea with them almost every evening; that Clark furnished a house for them. This was at the very time that Wm. Despau was suing his wife for abandoning her children, and "leading a wandering and rambling life," living in open adultery. Madame Despau says Clark stated that he had told Coxe, Davis and Relf of his marriage. All these gentlemen deny the truth of this statement.

Clark was a land speculator. He bought and sold land. He knew the rights of wives, and that it was necessary for them to join in sales by husbands. In which of his numerous sales, does Zulime join him? None; no, not one. And yet this complainant would show that he committed a gross fraud upon all persons to whom he sold, in not securing the renunciation of his wife.

[Mr. Duncan next referred to Clark's courtship of Miss Caton, as conclusive that he was not married, and quoted the letters and evidence referring to that fact.] No one would believe that Clark would address a lady whilst he had a wife living. The presiding Judge of this Court intimated that the children of Mrs. Barnes were estopped from denying the declarations of their mother. Shall not this complainant be estopped from denying the acts and words of her father?

It is equally clear, from Clark's own letters to Coxe, that he had, previously to his affair with Miss Caton, been addressing Miss Lee, of Philadelphia. (Read letter of Mrs. Coxe, referring to this affair.) Would Clark have received such letters, and kept up such a correspondence as this, when he was, in truth, a married man,—would he play off such an imposition upon these highly respectable people?

Next, we have Clark, in 1813, engaging himself to Madame Lambert. (Read evidence on that point.) At or about the same time, Clark was paying his addresses to another lady, Miss Chew. What says that lady in answer to the query if Clark was a married man? "He certainly was not a married man; he gave me every proof of that a gentleman could give a lady." And we have the letter from Clark's own sister, dated Liverpool, May 3, 1806, referring to a toilette prepared for him, which she hopes may be intended for a Mrs. Clark: "So much do I wish to see and hear that name worthy of you;" and Clark's reply, precluding all idea of soon forming a matrimonial alliance. This was two years after the complainant was born. Then, too, we have the fact, that Clark was frequently in Philadelphia after Zulime's marriage to Dr. Gardette, and never hear of his objecting to another man's living with his wife. Who that knew Clark believes so preposterous a story as this? To complete this evidence, so far as the acts of Daniel Clark are concerned, we have his will of 1811, which he could not have made if he had been a married man, and which gives his whole estate to his mother. In this connection, Mr. Duncan referred to the interview between Mr. Mazureau and Clark, respecting the latter's inability to make a will in favor of complainant, and inferred what the other proofs confirm — that he followed Mr. Mazureau's advice, and made confidential assignments, to secure his natural child; and, having done all that nature, and more than the law required of him, turned his thoughts to his mother, and gave her the remainder of his property. He then proceeded to show the great social disparity between the parties: Clark, a distinguished and high-spirited man; and Zulime, a woman of tainted reputation — a *femme gallante*. He cited the testimony of the various witnesses on this point — all proving that their connexion was one of illicit love; and that if it had been suggested that he was married to her, he would have turned away with loathing and disgust.

He then proceeded to comment on the New York marriage certificate, contending that it had been in the possession of the complainant in 1840, previous to the trial of the Patterson case, and yet was not filed in that case. It was, too, suspiciously kept secret; and the fact to be proved by it, was sought to be proved by other testimony. After all, the certificate only proved that one Jacob DeGrange, not Jerome, was married.

But if DeGrange had committed bigamy, she could not marry until her marriage was annulled by a judgment of a court. He then dwelt upon the honesty and legality of all the proceedings of Chew and Relf, as executors, in the disposition of Clark's effects, and quoted largely from Clark's letters, to prove his embarrassments and the worthlessness of his estate. In his letters to Coxe, he says he is only enabled to sustain himself by getting a continuation of his credit on the Louisiana Bank, through Relf's influence. He also offers to transfer all his property to Coxe for $25,000. Read numerous other letters, showing how Clark's colossal fortune had shrivelled up—how unreal it was, and how, after weeping over the prostration of his golden hopes, he sunk under the pressure of his embarrassment into the grave, a broken-hearted man. And yet, when writing these despondingletters in 1813, we are told that Clark was rioting in wealth, and pompously preparing "the charter of Myra's social birthright!"

Mr. Duncan then proceeded to defend the characters of Chew and Relf from the imputations cast upon them. They were men who have lived in this community for near sixty years, without reproach and without blame.

The language uttered against them could only proceed from an advocate who is a stranger in this community. These gentlemen have raised families here—they have served their country on the battle-field—they have lived to advanced age, without spot or blemish. These vile charges have long since sunk into the very gutters. and he who attempts to resuscitate them, will find that to touch them will only drag down the one who tries it to the level where the charges lie, too low even for the notice of honorable men. Mr. Duncan then proceeded to show the respective positions of complainant, as claiming under proceedings tainted with all sorts of fraud, and the defendants being *bona fide* purchasers of the property. This suit could not be maintained, without bringing dishonor on complainant's parents. (5 *Robinson*, 20.)

Mr. Duncan then strongly reprobated the violent language employed by the solicitor of complainant (Mr. Wright) and especially his sneering allusions to the Catholic religion, its forms and ceremonies, in connexion with the ecclesiastical record introduced by defendants.

He then proceeded to answer some of the points made by Mr. Campbell, and passed to the plea of prescription, which he contended amply protected the defendants. The succession must be accepted. This was not accepted until near forty years after the death of Clark. What became of his estate in this long period? It was either a vacant, or one administered by Chew and Relf; if the latter, you must take it *cum onere;* if the former, prescription ran even against absent minors. (9 *La. Rep.* 140; *Poultney's Heirs vs. Cecil.*) He also contended that it would be necessary to prove against Chew and Relf an intention to appropriate to their own use the property of Clark. The *quo animo* was the question, and on this point he cited a great many authorities. Mr. Duncan concluded his able and extended argument thus:

I have done. I call upon this court to vindicate the characters of defendants, so long, so wantonly, so cruelly outraged. I have discharged my duty. Let heaven and earth bear witness that you do yours.

SPEECH OF MILES TAYLOR,

For Defendants.

May it please the Court: I deeply regret that my numerous avocations and the short time which I have been able to give to this case, will prevent my doing justice to the astute and able arguments of the complainant's counsel. I must, therefore, bespeak the indulgence of the Court for an argument which I fear will not be presented with that distinctness and lucid order which the nature and importance of the suit demand.

The first difficulty we encounter in the discussion of this case, is the judgment in the Patterson suit; a judgment which I hope to prove to your Honors, is founded upon proceedings that entitle it to no confidence—a suit and a judgment which were not serious between the parties, and which cannot have the force of *res judicata.*

Judge McKinley: I consider this a proper occasion to state that I will not consent to review and reverse a decision of the Supreme Court. I shall consider this Court bound by the decision of the Supreme Court in all points determined in the Patterson judgment. I stated this before the argument commenced, and warned gentlemen to confine themselves to those points which did not arise in the Patterson case.

Judge McCaleb: I consider it proper to say that I shall deem it my duty to examine if the decision in the Patterson case does not conflict with our own jurisprudence, by which the decision in this case ought to be controlled.

Judge McKinley would repeat that he could not reverse the judgment of the Supreme Court. That tribunal did not seem to be held in great respect by some persons in this city, and he (Judge McKinley) had been charged with having come here to sit in this case, and with corruption for intimating that such would be his decision.

Mr. Taylor: Far be it from me to imply the slightest suspicion that your Honor is not perfectly correct in the view which you have taken of your duty. The point of my remark was, that the proofs we now exhibit plainly show that the Patterson case was not a serious but a collusive one, and therefore entitled to no respect from this court. But we will go further, and meet the views of his Honor, the Circuit Judge, by showing that the case in the record presents many features which did not appear in the Patterson case. I refer particularly to the new facts of the ecclesiastical record, the alimony suit, and other proofs to which I shall call the attention of the court at some other time.

The first position of complainant's counsel to which I shall refer is, that the marriage of Daniel Clark and Zulime Carrière being proved, the *status* of the child is established. To prove this marriage, besides the testimony of Madame Despau, which has already been commented on by my colleague, the counsel has referred to the cohabitation of the parties. I did not think that my learned opponents would be guilty of this temerity. The history of this case gives but little sanction to the pretence of cohabitation. Such cohabitation, to have any weight as proof, must be public, reputed, and known as such. In this case, the marriage was secret,—it was kept from even the most intimate confidential friends of Clark. The issue was concealed —it was abandoned to the care of strangers; the mother avoided it with unnatural horror, as a living proof of her sin—a stain upon her reputation. Colonel Davis found it neglected and suffering. His pity was aroused, he took the child under his protection. His amiable wife nursed it through all the weakness and sickness of its infancy. That child never knew a mother's care nor a father's pride. She grew into womanhood in blissful ignorance of her birth, returning the parental attention of Colonel Davis and his family with filial love. She had attained full age, and formed a matrimonial alliance, before the secret of her birth was revealed to her. During all this long time, there is not a scintilla of proof that this child was ever held forth to the world as the child of Daniel Clark.

Mr. Campbell—I call the attention of the gentleman to the deposition of Bishop Chase.

Mr. Taylor—I will take that up in due order. Bishop Chase admits that he never went into the house of Colonel Davis. A difficulty existed between them.

Thus, may it please the Court, does it appear that, but for that good Samaritan, Colonel Davis, the child —the lawful child of the rich and powerful Daniel Clark—would have perished from desertion, from actual neglect!

So much for the public report of the parentage of this complainant, and the marriage of Daniel Clark.

Let us now analyze the direct testimony by which the complainant seeks to prove these facts, upon which her case rests. This testimony consists of the deposition of Madame Despau, who swears that she witnessed the marriage; that of Mme. Caillavet, another nunt of complainant, who says she heard of the marriage from Clark himself, and an implication to that effect from the testimony of Boisfontaine.

In examining these depositions, I beg to remind the Court that the statements of witnesses are not, themselves, facts; they are only the evidence from which the Court is to deduce facts. To judge of the weight of such testimony, we must not only consult the testimony itself, but look to the circumstances under which it was taken, the position and relations of the witness. What credit shall be given to the testimony of Madame Despau? She is the sister of complainant's mother. Her testimony was taken by commission. She was not brought into court to be confronted by this tribunal, and to be subjected to the wholesome tests of oral examinations. She speaks French, and was aided in giving her testimony by her son or nephew. The deposition bears intrinsic evidence that it should be regarded with suspicion. It is written by a person who had some rhetorical fancies, and has marvellously the appearance of a document previously prepared, to which the deponent affixed her signature and the commissioner his *jurat*, and transmitted it to the court, as the evidence upon which this immense property is to be wrested from its present proprietors and given to the complainants. [Mr. Taylor then commented on the point previously discussed by Col. Preston and Mr. Duncan, in relation to the discrepancy in the dates between Madame Despau's testimony and the complainant's bill.] This testimony bears undoubted evidence that the witness was practiced upon; that her deposition was made up to suit the emergencies of the case; that it was the result of consultations between her and the complainant, and that, in fact, her deposition was prepared for her by the parties. Madame Despau, therefore, comes before this court in most questionable shape, with small claims upon its confidence or credit.

Let us view this testimony in another aspect. Is it at all consistent with probability? Are the facts sworn to such as may be reconciled with the ordinary conduct of men and women under similar circumstances?

The witness states that, in 1807 or '8, she and her sister went to the North to get proof of the marriage to Clark. The priest had gone to Ireland. As soon as this fact is discovered, she abandons all hope, and surrenders herself, not to despair—but to the arms of another husband! She marries Dr. Gardette! Now, is there any probability in this whole story? What proofs did the sister want, when she had Madame Despau along with her, the living witness of the fact? Could she not state the place where it occurred—the street, the house in which they resided, whilst in Philadelphia?—some fact or occurrence, however small, which might lend confirmation to her positive declarations? No, not one! To all interrogatories touching these ordinary facts of time, place, and circumstance, she gives one unvarying *non mi recorder*; she remembers nothing but what is contained in that deposition; which, by the by, she has repeated, word for word, in previous depositions, with the single variance as to the date of the marriage, to suit the amended pleadings in the case. All these are grounds of objection to this deposition, which must deprive it of all credit and respect.

But, further, we show that this witness is not to be believed, because of certain moral or personal objections, which go seriously to her credit.

Judge McKinley.—The evidence to impeach this witness must be such as was not before the Supreme Court in the Patterson case.

Mr. Taylor.—I refer particularly, your Honor, to the record proof of the adultery of this witness.

Judge McKinley.—Will it be seriously insisted that this is a proper ground for rejecting this deposition? If it is, will it not apply as well to men as to women; and if so, would we not be hard off sometimes for witnesses? Suppose a murder was to take place in a brothel, would not the occupants be good witnesses? You must show what the reputation of the witness is for truth and vercity. I would again call the attention of the counsel to the importance of dwelling upon the points in which the present case differs from that of Patterson. He has already directed our attention to one difference—that as to the date of the marriage.

Mr. Taylor.—I shall cheerfully meet your Honor's views, but must at present pursue the line of argument which I have marked out.

In considering the probabilities of this marriage of Clark and Madame DeGrange, the complainant is met by one consideration, which cannot be too seriously estimated by this court. It is this: If Zulime DeGrange was married to Daniel Clark in 1803, or previous, her subsequent marriage to Dr. Gardette in 1808 would be a bigamy, a serious felony. Now, the presumption of the law is in favor of innocence, and that presumption is a strong circumstance against the probability of the marriage of Clark and Zulime. Confirmatory of this, we have the scene between Zulime and Coxe in 1807, when she presented herself before Coxe, made inquiries about Clark's attentions to Miss Caton,—stated that Clark had promised to marry her, that she was released by his breach of his engagements, and that she intended to marry somebody else, and accordingly we find that she shortly after married Dr. Gardette.

But this is not the only circumstance tending to exclude all probability of this marriage. We present here the record of a suit brought by Zulime DeGrange subsequent to her pretended marriage with Clark, in which she claims alimony of Jerome DeGrange, alleging that he is her lawful husband, and is bound to support her as his legitimate wife. But counsel say this is not evidence, and they introduce a number of authorities to show that a Bill of Equity is not evidence, that the pleadings at common law are not evidence, and that in those systems of judicature it is the habit of legal gentlemen to introduce fictions into their bills. This rule, however, is not applicable to proceedings under the civil law, as it prevails in Louisiana. Our pleadings are simple and truthful narrations of facts, signed by attorney of petitioners. No fictions are permitted by our law. The allegations contained in such pleadings bind and conclude the parties not only in that suit but in all others between the parties. I refer the Court, on this point, to a decision in 6 Martin, 208, which is perfectly conclusive; also, to a recent unreported deci-

sion, of which I will furnish the Court a copy, to the same effect.

The complainant in this case comes before this Court—Firstly, as heir of Daniel Clark, and as such entitled to her *legitimé* of his property; and, secondly, as assignee of her mother, Zulime's rights in the community, which marriage superinduced between her and Clark. Now I take it to be an indisputable proposition, that the representative of Zulime Carriére must be bound by her admissions; that she, at least, cannot contradict the averments of her own mother and assignor. I refer now to her solemn declarations made before the Ecclesiastical Court, convoked to investigate the charge of bigamy against DeGrange. Her declarations, then and there made, were not loose and careless whispers in a private chamber, which might be misunderstood, forgotten, or perverted by corruption or failure of memory, but they were made in the broad day, under the sanction of an oath, before the most august tribunal, and under the most solemn circumstances. It is there she states that DeGrange is her lawful husband, and that she had no reason to believe that there was any impediment to their marriage. There is another fact to be deduced from this deposition. Zulime states that she went to the North, not to contract a marriage, but to inquire into the truth of an alleged preëxisting marriage. Now, under such circumstances as these, we are forced to believe that though a marriage with Clark might have existed, it is a conclusion so contrary to every principle of human nature,—so unnatural and extravagant, that the mind demands the most full, complete, and satisfactory evidence before it can yield its faith. Before, therefore, we can receive and credit this testimony of Madame Despau, we must believe that the mother of complainant was guilty of the two most serious crimes which can be committed in the eye of God and of law,—the crime of perjury, one which corrupts the fountains of law, of truth, and of justice,—and the crime of bigamy, which breaks up the domestic relation and unlosens that sacred bond upon which the virtue and happiness of society alike depend, the marriage relation. So much for Madame Despau.

We pass now to the other witness to the marriage of Clark, Madame Caillavet. She states that Clark declared to her he had been married to her sister. This deposition is liable to the same objections we have urged against that of Madame Despau. She, too, did not understand English. The interrogatories had to be translated for her; it does not appear that it was done by a sworn interpreter,—there is no satisfactory evidence that it was properly taken down.

[Mr. Taylor then pointed out other discrepancies in the deposition of Madame Caillavet, from which he concluded that her testimony was altogether unworthy of belief.]

According to this witness, Clark acknowledged that he was married to her sister. Even supposing that she told the truth, what weight can be attached to the declaration of a party long since in his grave? Such testimony cannot be impeached—it is not punishable for perjury—it is surrounded by none of those guards and pledges of truth which should entitle it to evidence. It is of the class of mere loose declarations, made, no one knows where or when, and which only live in the perverted memories of the parties interested, who in this case are the near relations of the complainant.

Mr. Taylor then examined the testimony of Boisfontaine, and showed that his reference to Clark's marriage did not necessarily imply the marriage with Zulime, and was liable to the same objections on the score of loose declarations, as that of Madame Caillavet.

So much for the testimony to the fact of Clark's marriage with Madame DeGrange.

In regard to the legitimacy of the complainant, we are referred to the testimony of Bellechasse, the most important witness to that fact, who speaks of Clark's repeated acknowledgments of the legitimacy of Myra. These declarations are to be weighed with reference to the laws and customs then prevailing in the country. The Supreme Court considered Clark's declarations as sufficient evidence of the legitimacy of the complainant. But their Honors, no doubt, in arriving at this conclusion, were controlled by the usages and ideas of the present, rather than of the age when the facts occurred, to which this witness refers.

This case is a remarkable one. The history of it may be divided into four epochs, during each of which, different systems of jurisprudence prevailed. The first epoch, including all that portion of the case which relates to the pretended marriage of Clark and Madame DeGrange, occurred under the Spanish Government, before the cession, and is therefore to be considered as falling under the jurisprudence prevailing in Spanish colonies. Epoch the second, includes the period after the cession, when the laws of the State were in the transition from a Spanish colony to a territory of the United States. The third epoch commenced with the old code of 1808; and the fourth, with the present civil code of 1825. In the progress of our investigation into this case, it may be necessary to refer to each of these epochs.

Under the laws of Spain, there were many provisions in regard to the offspring of lawless love. Natural children were regarded in several aspects. The first class consisted of those born of concubines living in the common building; the second, those born out of the common building; the third, of those born of the common women of the streets; and the fourth, of incestuous or adulterous children. The laws of Spain permitted the legitimation of a natural child, not incestuous or adulterous. Under these laws legitimation might be made by will, or by act. The legitimation by will has been abolished by the code of 1808, but that by act was continued in force. In 1825 all the Spanish laws were abolished in this State. In 1835 an act of the Legislature revived those portions of the Spanish laws which refer to legitimation. Under the Spanish law a father might legitimate his natural child, but it was provided that he should not mention it as a natural child. This recital would render null the act. It is with a view to this provision of the law that Bellechasse speaks of Clark's expressing his determination to make his will in favor of Myra, declaring her to be "his legitimate daughter." But that Bellechasse ever believed that Myra was his legitimate child, is utterly disproved by the conduct, the acts of the witness. Bellechasse was an honorable, chivalrous man. So was Pitot. They were intimate friends of Daniel Clark. They were present at Clark's death. They received his last dying injunctions. Now can any one imagine that these men would stand by and see the legitimate child of their old friend bereft of her rightful inheritance; see the will of 1811 probated, and not

raise their voices against such injustice and wrong to the lawful child of their old friend? Such conduct, such silence would be altogether inconsistent with the high reputation of these gentlemen. If the positions of complainant are at all tenable, they stamp with infamy, with eternal dishonor, the early and staunch friends of her father. Judge Pitot, the very gentleman to whom it is pretended Clark declared the legitimacy of Myra, and exhibited this pretended will of 1813, is the Judge before whom the will of 1811 was probated. It is a remarkable feature of this remarkable case, that the complainant cannot succeed in her pretensions without covering all her relatives and friends with infamy. If her allegations and proofs in respect to her own father's conduct have any truth in them—if he really did marry this lady, and desert her under the circumstances developed in this record; abandoning his legitimate child to the uncertainties and doubts which, even in the complainant's showing, envelope her origin and history, then I would say that Daniel Clark's friends, instead of tracing his origin to the kings of Ireland, as some of the witnesses say he was in the habit of doing, might more justly claim for him a descent from a line through whose veins flowed the blood of all the scoundrels that have lived since the flood! Such conduct, on his part, should forever blot out the tribute to his virtues, inscribed in monumental marble, pronounce its eternal falsehoood, efface all written records of his worth, heap infamy upon his ashes, and transmit his name, blackened and blurred, to generations yet unborn, to be cursed, despised, and contemned by all men.

I pass to another proposition which I lay down in this case. It is this: if such a marriage as is alleged did take place between Daniel Clark and Zulime Carrière, it was invalid on account of the want of capacity in said Zulime to contract such marriage. It has been asserted that the actual marriage being proved, the burden of disproving it is thrown upon the defendants. This principle is laid down too broadly;—it is extended too far. As I understand it, the authorities go to this extent, that the celebration of the marriage being proved, its validity is presumed. But such presumptions cannot prevail over the positive proofs of a pre-existing marriage. And shall all the presumptions be in favor of the complainant, and none be admitted against her? The marriage to DeGrange being proved, shall it not be presumed to be valid,—or shall it, upon unsubstantial report, be stamped with infamy, and the children springing from it as adulterous bastards? The law will not allow the holy tie of marriage to be stigmatized on light proof! Why, then, should we not extend the same favorable consideration to the marriage with DeGrange, which is invoked in favor of the pretended marriage with Clark, and with what propriety and conformity to the ordinary rules of reason and justice shall we presume bigamy against DeGrange.

And upon what proof does this charge of bigamy against DeGrange rest? It consists, first, of a record or certificate of a pretended marriage, celebrated in New York, of DeGrange to Madame D'Orsi; and, secondly, of the testimony of Madame Benguerel, as to the confession of his bigamy by DeGrange.

On the first point, I have but little to say. The certificate relied on is totally defective, as it describes the marriage of one Jacobum DeGrange, and this complainant admits that her mother's first husband's name was Jerome—in the Latin Hieronymus. Now, it is an unquestionable principle of law and justice, that before a prior marriage can be allowed to avoid a subsequent one, the proof, as to the identity of the parties, must be *conclusive*. But here is not even a *prima facie* case. Your own certificate attests the marriage of Jacob, not Jerome DeGrange. One of the counsel for the complainant maintained that this misstatement of name was a part of the fraud of DeGrange, but I apprehend that gentleman will not be permitted to impeach their own proof, and that if they do, the idea that DeGrange had a prevision, a foreknowledge reaching many years into the future, of what would come to pass in this long and complicated drama, is too preposterous to justify my commenting on it.

Secondly: The testimony of Madame Benguerel is relied upon to prove the confession of DeGrange, of his previous marriage. But if this evidence is to be credited at all, the confession must first be made definite as to the individual; and, secondly, it must be made at a time when the party was not interested in making it. The confession must be made at an unsuspicious time. In this case, DeGrange's declarations were made after the proceedings of the Ecclesiastical Court—long after the parties had acquired an interest to dissolve the compact existing between them. The home of DeGrange had been made desolate, the nuptial couch had been despoiled, his name disgraced, his domestic peace and happiness destroyed. He might well desire to have a relation, which brought upon him so much misery and disgrace, dissolved. Hence the confession, if it really was made—extorted from him in the bitterness of his grief and despair—that he had been previously married. Lord Elden lays it down that a marriage cannot be dissolved by the acts or declarations of the parties made subsequently. In a solemn criminal trial, confessions of this nature may be admitted against the party making them, but in a controversy like that of legitimacy, in which the rights and interests of other parties are involved, such declarations cannot be permitted to weigh—the testimony must be positive, direct, and conclusive. The confession of DeGrange, as stated by Madame Benguerel, was made after his unhappy voyage to Europe, in 1801—after the birth of Caroline Barnes, in 1802—which occurred under such circumstances, and at such a time, as to stamp it as the offspring of unlawful love. It was after this child had been abandoned by its mother, and taken charge of by Coxe—abandoned because it was necessary to save her reputation to keep its birth concealed—it was after these occurrences that DeGrange returns to New Orleans, when he finds himself disgraced, his wife a wanderer from his bed, his property all dissipated, and then, no wonder, he seeks, by every and all means, to rid himself of so hated and fatal a connection. So much for Madame Benguerel's testimony as to De Grange's confession of his previous marriage, which, too, comes under that class of loose declarations to which I have already referred. Then, too, we oppose to this testimony, which has lain for thirty years in the memory of Madame Benguerel, subject to all the imperfections and perversions of humanity, the written confession of the same man, made under oath before a solemn tribunal—declarations that have come down to us as they were made, through no uncertain or imperfect medium.

Judge McKinley. This record possesses great weight, as far as the confession of complainant's mother is concerned, in connection with the claim to the mother's share of the property; but this would not affect her claim as heir.

Mr. Taylor. In matters of public interest, like marriage, pedigree and legitimacy, a record becomes evidence to all the world. But, further, can the declarations of DeGrange, a third party, be offered against us? He is a stranger to us in this suit; can he be allowed to make testimony to deprive us of our property? If, too, we are to be concluded by the declarations of DeGrange, we should be benefitted by those of Zulime. She is a party in interest against us. She has something in common with complainant; we certainly have nothingn in common with DeGrange.

I come now to another matter, which the counsel for complainant consider the turning point, the pivot of their case. I refer to the proceedings in the county court of New Orleans, by Zulime against Jerome DeGrange. The complainants say this was a suit for a divorce. This record furnishes nothing which favors the pretensions of complainant. The petition is lost, and we must, therefore, grope in the darkness for its grounds. The defendant excepts that the court has no jurisdiction of matters of divorce. The only further document in this suit is, the endorsement of the Judge —"judgment for plaintiff, damages $100." Now, supposing this judgment was one of divorce, it must be shown that it was rendered on the ground of prior marriage, before it can avail the plaintiff. A marriage may be invalidated on other grounds under the Spanish law than previous marriage, such as impotency, non-consent, taking the veil, &c.

Mr. Campbell. The testimony of Madame Despau shows that the judgment was one of divorce for bigamy.

Mr. Taylor. I am speaking now to the record, which it is not competent for Madame Despau to contradict, add to, or explain. I assert that this is simply a "judgment for plaintiff for $100," and that there is not the slightest ground to justify the presumption of the complainant's counsel that it was an absolute judgment of divorce, founded upon a pre-existing marriage, and that this record cannot to be eked out by the oral deposition of Madame Despau.

Judge McCaleb. Are the names of the witnesses given? Is Madame Despau one of them?

Mr. Duncan. No, sir. Madame Caillavet is one of them.

Mr. Campbell. The record is deficient.

Mr. Taylor. I will now cite to the court an authority bearing on this point. It is the case of the Dutchess of Kingston, already referred to by one of the counsel for complainant, reported in Howell's State Trials, vol. 20. The facts of that case were simply these: The Dutchess of Kingston, previous to her marriage with the Duke, had been married to a Mr. Harvey, who was supposed to be the heir of some Earldom. His prospects, however, were dissipated, and both parties became mutually desirous of separating. A jactitation suit was, therefore, got up between them in the Ecclesiastical Court, and a judgment rendered against the marriage. She then married the Duke of Kingston; at his death the heirs objected to her right to a share of his property, on the ground of bigamy. The matter came up before the House of Lords, when the record of the jactitation suit was introduced. It was excepted to, on the ground that it was inadmissible and collusive. The point was submitted to the twelve judges, who determined that the record was not a competent evidence, that it might be attacked for collusion, and that the judgment of a court of concurrent or exclusive jurisdiction is not evidence on any collateral matter, nor proper to be cited as authority in any other suit. The record in the case introduced by complainants furnishes no evidence of the grounds of the decision. It does not show that the marriage was avoided on the grounds of the previous marriage, much less does it mention the name of the party with whom such previous marriage was contracted.

I contend, therefore, that this record possesses no weight whatever as proof, because the pleadings do not show that the question of previous marriage was raised,—they do not indicate the name of the pretended first wife, without which the defendant could not come prepared to maintain his defence,—they do not set forth time, place, names of parties, and dates, specifically. The judgment of this court is not one of divorce—it is simply one of damages. In every country there exists courts of exclusive jurisdiction in matters of divorce. Such courts existed under the Spanish laws. These laws were continued in force in the Territory of Louisiana until changed by legislative action. Now, I admit that, after the cession, the Ecclesiastical Court ceased to exist,—it could no longer discharge its previous powers. No court, with power to grant divorces, existed in Louisiana until such tribunals were established by the Legislature, which was some time subsequent to the proceedings in the suit referred to. All divorces previous to the creation of such courts, and subsequent to the cession, were made by the Territorial Council. Further, it should be borne in mind that these proceedings against DeGrange were had in his absence—that he was represented by a *curator ad hoc*, and was not here until 1805,—that it was not a serious contest, in which he had any opportunity of making a serious defence. This whole proceeeing has very much the appearance of a suit got up for a particular end, and had DeGrange been present, it would, no doubt, have been regarded as a collusive suit. It grew up at a time when DeGrange had an interest in allowing a judgment of divorce to be entered against him—when he chafed under a connection of dishonor—whilst the other party possessed a like interest, and had been struggling for years to rid herself of a *mes alliance*. She had the most direct and positive interest a mortal could possess, to have this marriage set aside, whether we take it on the hypothesis of complainant, that she desired to rid herself of an obstacle to the publication of her marriage with Clark, or upon the other hypothesis, that DeGrange was an obstacle to the indulgence of an illicit connection—her interest is equally strong and palpable. She might shrink from encountering that outraged husband, who, returning from France, found his once happy home polluted, and his peace destroyed. It was not until this unlawful intercourse commenced,—until she had fled from her home to a foreign land, to conceal the birth of an adulterous child,—had abandoned that child to strangers, that she commenced those proceedings for a divorce. Before she had attained this degradation,—in her oath before the Ecclesiastical Court, in her allegations in the ali-

mony suit,—she had contradicted all the matters upon which it is now pretended she obtained her divorce. She, no doubt, conceived that if she could be relieved of DeGrange, she might contract the splendid alliance with Daniel Clark. Hence all these proceedings. [On the point whether parties could be permitted to make testimony for themselves in suits like this, Mr. Taylor introduced a number of authorities; and also cited the case of McNeil *vs.* McGregor, that a marriage could not be annulled by the acts of the parties.

Let us now consider the complainant's rights, under another aspect. Let us admit the bigamy and consequent invalidity of the marriage of Jerome, and the existence and legality of that of Clark and Zulime, and yet I contend the complainant cannot recover. It has been laid down in argument as an unquestionable proposition, that marriage, celebrated according to the law where it is made, is valid elsewhere. This principle has obtained generally, but not, as I shall presently show, universally. It brings up a question of the conflict of law, that extensive and interesting branch of jurisprudence upon which the lucid mind of Judge Story, has cast such a flood of light. This principle, it is admitted by Story, is subject to exceptions. In France, for instance, the Courts have assumed to annul marriages of certain of its citizens, who were married in foreign countries, according to the laws and usages of those countries. Even in England, this rule has its exceptions: For instance, it has been determined that parties moving from England to Scotland, and obtaining a divorce according to the laws of the latter country, return and form a second marriage, the offspring of such second marriage is declared illegitimate, though they were married according to the laws of Scotland, where the marriage was celebrated. Thus the Courts of England would not sanction and enforce a marriage which according to the laws of a sister kingdom was valid; much less would those courts refuse their sanction to such marriages made in a foreign land. In this case, the marriage was not one celebrated in a sister State, under the same general government, with only different municipal regulations. It was a marriage in a foreign land between foreigners—Zulime was a citizen of a Spanish colony. Daniel Clark was not a citizen of the United States,—he was a stranger, domiciled in New Orleans. These parties left the soil of Spain to evade its laws,—they went to Philadelphia, and were married according to the laws of Pennsylvania. Now, the laws of Spain forbade such a marriage until the previous one had been dissolved, and looked upon the offspring as adulterous. This marriage was contracted with a view to return and reside in the colony of Spain, and continue their adulterous connexion. Now, it is held by the civil law that marriages made to evade the municipal law are invalid. Such was the law of Spain. This principle is recognized in the decisions of our Supreme Court. If, therefore, by the Spanish law the marriage thus made was regarded as adulterous, the child also born on Spanish soil, was likewise adulterous. See Lebreton *vs.* Muchett. 3 Martin. That was a case in which the parties resided in this State, and having some obstacle to their marriage here, went to Natchez and contracted marriage there. They then returned to Louisiana, and resided here. After this a large amount of personal property was left to the wife, and it became a question whether this property was controlled by the law of Mississippi, so as to vest the whole property in the husband, or by the law of Louisiana, so as to continue his wife's rights. It was decided that the rights of the marriage, though celebrated in Mississippi, were controlled by the laws of Louisiana, and the wife kept her property.

And now I have said all that I had to say touching the marriage of Zulime Carriere to Daniel Clark, the legitimacy of the complainant and her heirship. I think I have shown that no such marriage was contracted, and if it were, it was not valid; and further, that in the present case there is a great variety of evidence not contained in the Patterson record, which, if it had been brought before the court, the decision would have been quite different. I come now to examine a legal question, which will protect the defendants from the present suit. Clark died in 1813. At his death his will of 1811 was produced. In that will he constituted his mother his universal legatee. There was no evidence that there was any legitimate descendant. Mary Clark entered into the possession of her son's whole property. The property was duly administered and sold in her name to the present holders, without any notice. They are consequently *bona fide* holders without notice, and no recovery can be had against them. It is necessary here to note one fact. The common law does not apply here in questions of the title to real property. There is a great difference in this department of the law between the civil and common law systems. The common law is harsh and unbending. Some of its rules, particularly in its early days, were rigid and unjust. They have been since modified and improved by provisions of the civil law, introduced through the Ecclesiastical and Chancery Courts. The principle of the common law is *caveat emptor*,—you must take notice of all defects, and subject yourself to all the latent frauds and impositions of the designing. The principle of the civil law is directly the reverse. It presumes all men to be acting in good faith, and spreads an ample shield over all honest dealers. It makes various provisions against all disquieting of titles. Among other arrangements, it requires all parties to register their conveyances, and deprives them of all validity as to third parties, until registered. Innocent purchasers of property are, under the French and Spanish laws, fully protected against all preëxisting sales not recorded, so as to be known to the world. In applying the principle of the civil law in reference to *bona fide* purchasers, we must confine ourselves to the French law, as the contest arises since the code of 1808. It is now the settled jurisprudence of France that purchasers of property under the heir in possession, are protected against the pursuit of a nearer heir who may afterwards appear and claim the estate. [Mr. Taylor then read two decisions of the Court of Cassation, founded on certain articles of the code of Napoleon, which have been transferred to our code, settling the doctrine, that sales made by the apparent heir would be protected against any subsequent proceeding of a nearer relation, who appears and claims the estate,—and that though the sale of a thing belonging to another is null, yet, when a party, having an apparent title and heirship, enters upon the property, he is presumed to sell what belongs to him, and equity confirms the validity of his sales, and protects the purchasers.]

Mr. Campbell: Must not the heir accept the estate judicially? Must there not be good faith in him?

MR. TAYLOR: I do not find that it is made a question whether the heir accepts judicially or not, or whether the heir was in good faith or not.

MR. CAMPBELL: Merlin lays it down as essential that there should be good faith in the seller. In this case there are neither averments nor proofs of good faith.

MR. TAYLOR: I have great respect for the gentleman's knowledge of Chancery law, but I must remark that the principles of that system are greatly modified when the court sits in the State of Louisiana. In the civil law there is a distinction between the sale of a particular piece of property and the sale of the whole succession. If the apparent heir sells the whole succession, he sells only his own rights, and the person buying takes his rights, and the real heir may enter and recover the property; not so when he sells a particular piece of property belonging to the succession.

As to the point that there are no pleas and proofs of payment, I rely upon the acts which are filed with the answers as affording not only good *prima facie* proofs between these parties, but also as to other parties. When a direct issue is made as to the reality of the consideration, then actual proof is required. [On this point Mr. Taylor cited some authorities.] On this question of purchasers in good faith, the Common Law has been in some degree infused with the spirit of the Civil Law, and we must therefore look to the Civil Law for a full interpretation of this principle. Here, at least, the doctrine of the Civil Law must prevail against the stringent principles of the old Common Law.

[Mr. Taylor then applied the decision in the cases decided by the Court of Cassation, to show their exact similarity with the present.] Mrs. Clark being the instituted and apparent heir, accepted the succession, which acceptance, according to Pothier, might be made either by word or act. The executors, Chew and Relf, were never in possession as executors; the law did not give them seizin. (*Art.* 166, *Code* 1808.) When the executor has not seizin, his whole duty is limited to the performance of conservatory acts, such as the delivery of legacies and other conservatory acts. The apparent heir sent Chew and Relf a power of attorney to act for her, and from that moment their power as executors ceased and determined. All the acts were therefore made by them as attorneys in fact, adding their description as executors. These mere useless words of description could not affect the substance of the acts, on the principle of the civil law, *utile non utili vitiatur*. Thus, it has been determined that where a man, having a power to sell certain property as agent, sold in his own name, it was valid. (2 *Hill*, *p.* 238.) [On this branch of the subject, Mr. Taylor entered into an extended and able legal argument.]

I come now to the plea of prescription. There are some points in favor of this plea, which have not been brought distinctly before this Court. There are two kinds of possession of immovable property—one is a civil, and the other an actual and corporeal possession. The only possession, with reference to prescription, is a civil possession. In the bill of complaint, it is alleged that Chew and Relf entered into possession of the estate; and, it is presumed, that their possession continued, until the contrary appears. [Read numerous authorities on this point.] The necessity of the rule, that possession accompanies the title, is shown in this State, by the great quantity of wild lands, which cannot be corporeally possessed.

The Supreme Court considered that the reference in the titles should put the purchasers on an inquiry, and destroy the inference of good fath. This principle is not in accordance with the law of Louisiana. See case of Fletcher's Heirs *vs.* Cavellier. And here that distinguished tribunal lost sight of the distinction to which I have referred between the civil and common law. The latter system presumes every thing in favor of legal owners. But would it not be monstrous to permit that law to override our State jurisprudence, and strip hundreds of persons of legal rights, acquired under our law?

Mr. Taylor next examined into the claims of Chew and Relf as partners of Clark, and this led him to remark upon the reputed wealth of Clark. Clark, it is pretended by the complainant, was a Cræsus,—a merchant Prince. Some of the witnesses state that he assigned several hundred thousand dollars for the benefit of this complainant. And yet what are the facts? In 1802, when it is pretended that Clark was a millionaire, about to retire on his ample fortune, it is in proof that he was, in fact, on the very verge of bankruptcy,—he was then taking all the chances, encountering all the perils of extended commercial transactions. For years before his death he was a deeply embarrassed man, and in his letters, he frankly acknowledges that but for the assistance derived from Chew and Relf, who held high trusts, he would have been ruined. The complainant has filed what she calls a statement of Clark's property in 1811, made by himself, in which he estimates himself as worth $400,000, upon which he owed but $5,000. This statement was a deliberate falsehood.

[Mr. Taylor then exposed the bankrupt situation of Clark, and described in a graphic strain the embarrassed state of the country at that time, dwelt on Clark's losses, his inability to raise collections in Mississippi; his obligation to Relf for a continuance of facilities in the Louisiana Bank; and how, by various mishaps, his whole fortune was swallowed up.]

In 1811, he speaks of being ruined, and avows his willingness to give up all his property for $20,000. Subsequently, he speaks of other embarrassments; in a letter in 1812, written a few months before his death, he continues this desperate strain. He speaks of his intense misery, his agony, of the tortures that would give him no peace. He says he will leave his property to the care of Chew and Relf, and laments with the true feelings of a son, that his relations will be left destitute in a foreign land, and professes his deep obligations to Chew and Relf.

Let us take another view of this matter. It is pretended by complainant that Chew and Relf were nobodies in the firm, that they owned none of the property. They cannot, at least, deny that Chew and Relf had character and reputation. The firm consisted of Coxe, Clark, Chew and Relf. Clark was the grasping, ambitious man of the concern. He aspired to great eclat as a man of political weight and of fashion; and mingled with the great men of the land, whilst Chew and Relf remained at their posts, laboring with the patient, honest toil of merchants, whilst Clark was ministering to his appetites and his love of distinction. But when the storm came, and bankruptcy lowered on them, these humble and industrious merchants, by

patient labor, breasted the perils that environed them; and these very men, now the objects of such ruthless slander and baseless accusations, aided their old friend, at a time when many a royal fortune went down, and saved him from being crushed under the weight of his debts. These gentlemen, on account of the confidence felt by the community, in them, could command resources which all Clark's pride and grandeur could not obtain. They did not mingle in the society of distinguished political functionaries and great men—they did not display their wealth and splendor in foreign lands; but devoted the best part of their lives to the unobtrusive employment of relieving this estate of the heavy embarrassments, with which Clark had incumbered it. One of the counsel has stated that Coxe, too, was not worthy of belief, and that he shared the plunder of Chew and Relf. Good God! Can such an imputation be made in view of the fact that Coxe had withdrawn from the concern in 1811,—that he allowed his claim against this estate to sleep for years, and did not press it to a settlement until the war had concluded, and peace and prosperity had begun again to smile on the land? Not until 1819 did he require a settlement of his claim, and then he contented himself with taking back property of the value of $29,000 for the $100,000 due to him (Coxe.) Yet, gentlemen have the hardihood to say he robbed the orphan! No language is sufficiently strong to express the indignation due to such an imputation. Clark then was hopelessly bankrupt. Had he lived a few years longer, under the embarrassments of the war, every vestige of his estate would have been swept away. Shall we then listen to this claim against honest, hard-working people, who bought under your father's will, and allow you to enjoy the prosperity which has since dawned upon the country, though when your father died he was a ruined bankrupt—and all because your father chose to keep the whole world, including his own mother, in perfect ignorance of this marriage of your mother, and birth of yourself? He had previously entrusted to his mother a child which he pronounced to be his illegitimate offspring—is it conceivable that he would have withheld from her the sacred secret of the birth of a child to him in lawful wedlock, who was to bear his name and inherit his fortune?

Mr. Taylor next alluded to the point that the heir must take the estate subject to all the debts and charges. He also contended that if the complainant should establish her heirship, she could only recover the residue of the estate after it had been administered. When Clark died this was an insignificant town; the property was of little value. Since then the greatest changes ever known in population and the value of property have taken place. Property, then almost valueless, has become of great value. In the event of a decree in favor of the complainant, and the setting aside of the acts of sale, how is the estate to be settled up? Is she to take this property at its present immense almost fabulous value, or are we to go back and ascertain the value of the property when Clark died? She has no more right to this property at its present value than a mere stranger to his blood. The parties who now hold the property were kept in ignorance of the marriage of your father and your heirship. Holy Writ says that "the fathers have eaten sour grapes and the children's teeth are set on edge." This complainant stands in the shoes of her parent and must inherit his fault. Her situation was certainly an unhappy one; the offspring of concubinage, if not of adultery; born in secret; removed and abandoned that the mother might receive no stain from her birth; deprived of the care and affection of either father or mother, and indebted to strangers for support and nourishment: viewing it in this light, this complainant's history certainly contains much to excite our commiseration and sympathies. But when we take another view of her case; when we see her coming forward, and in her avarice of gain, charging her own mother with an act which would consign her to the penitentiary,—charging her father with a base deception of the public and of his intimate friends, and a cruel imposition upon an unfortunate female,—charging her father's friends, who sustained him in the hour of his greatest need, when his fortunes tottered, and bankruptcy stared him in the face, with fraud and robbery; when we see her coming forward to take advantage of the crime of her mother and the fraud of her father, to wrest this property from the possession of these innocent defendants, who acquired it in good faith and have made it valuable by their industry,—in such an aspect of this case the complainant ceases to have any claims upon our favorable consideration, and the innocent defendants must alone command the sympathy and favor of all lovers of justice, equity and fair-dealing.

SPEECH OF JOHN R. GRYMES,

For the Complainant.

May it please your Honors: We are now approaching the close of this long protracted and hard contested case. The duty of concluding the argument for complainant, would be a clear and plain one, if it rested upon the merits of her case. But when we are required to follow the defendants in their devious and desultory course of argument—when it is made incumbent on us to reduce their various grounds to some method, so that they may be presented distinctly and clearly to the minds of the Court, we find our duty one of extreme difficulty and embarrassment.

The facts in this case are to be viewed in two aspects—first, with reference to the law by which this Court is governed, the law which prevails throughout nearly all the States of this Union; and, secondly, with reference to the local law of the State of Louisiana. I shall endeavor to present my views on the points in this case, with as much method as the very extended ground I shall have to pass over will permit.

The judgment in the Patterson case, decreeing that this complainant was the lawful heir of Daniel Clark, has not, in my opinion, been touched by the argument of defendants' counsel. I have examined the record in that case with the greatest assiduity and care, and can perceive no difference between it and the present case, except, in the introduction in this case, of the ecclesiastical record on one side, and the certificate of DeGrange's previous marriage on the other. There are, it is true, hundreds of letters and the depositions of a cloud of witnesses introduced to swell this record to its present enormous dimensions—all to prove that Clark was not married, and which the Supreme Court would not regard as of the slightest weight against the evidence of one witness to the fact of the marriage.

Having laid the time of the marriage of Clark and Madame DeGrange at one time, it is contended that we cannot prove any other time,—that our proofs must

correspond with the allegations. To judge of the force of this position, it will be necessary to refer to the record, and inquire what are the material allegations of the bill, to see if we are bound down to the restrictive rule insisted upon by the defendants. [Colonel Grymes read the allegations in the original bill,– also in the supplemental bill, stating that the marriage "took place on or about the latter part of the year 1802 or early part of 1803."]

Now, even if this paragraph were struck out, there would be enough in the bill to justify a decree. Does this paragraph forbid our proving that the marriage occurred at any other time. [On this point Mr. Grymes cited Stephens' Pleadings 292, Chitty's Pleadings 266, and other authorities.] I mean to state principles and not consume the time in citations. I therefore content myself with reading to the Court the decision in 4 Barnwell and Alderson, p. 438, as conclusive on this point,—these authorities show conclusively that the variance in this case is not fatal. The point is one of Chancery Practice, with which our local law has nothing to do.

Having settled the doctrine on this point, we consider ourselves at liberty to prove that the marriage took place within the substantial averments of the bill,—or at any time prior to the birth of complainant.

2.—The second point of the defendants is, that their answer being sworn to, cannot be disproved, except by two witnesses, or one witness and corroborating circumstances. We hold it to be an incontrovertible proposition, that when defendants to a Bill in Chancery swear to facts, of which they could have no personal knowledge, such as negative proof, it is an issue of fact tendered on the one side, and accepted by the other, which admits of the ordinary proof, and in such case the answer cannot override the bill sustained by a witness. On examination of the answer, we find that Chew and Relf, who reside in New Orleans, deny that a marriage, which was a private one, celebrated in Philadelphia, did take place. Now, this fact is one of which it is impossible Chew and Relf could take their corporal oaths, so as to negative the allegations of the bill. See 9 Cranch 160, for the law on this point.

Allegations of this sort in answers are mere deductions, inferences, and not facts, of which the defendants could have a personal knowledge. This question, too, I hold is fully decided in the judgment in the Patterson cas. (Col. Grymes read a very pertinent decision on this point, from 2d Marshall, 138.) It is therefore clear, that to contradict the answer of defendant, it is only necessary that we should adduce one witness; but we do more—we introduce one witness and many strong corroborating circumstances.

3. The third point of defendants was, that the marriage *de facto* of Clark and Zulime was not legal because of the previous marriage to DeGrange. Under this head we have to discuss—first, the Ecclesiastical Record; second, the Alimony Suit; third, the Divorce Record:

1. The Ecclesiastical Record of 1802 is produced, to prove the validity of DeGrange's marriage to Zulime, and to rebut the allegation of bigamy. How far is it available for that purpose? Though there was no judgment rendered, and therefore it cannot avail the parties; yet, even if there were a final judgment, what would it prove further than the fact that a certain proceeding took place before a tribunal called ecclesiastical.

JUDGE MCKINLEY. I would like to see the order in which the witnesses in that proceeding were sworn and examined.

COL. GRYMES. I will presently refer to them.

These proceedings were had before a Court presided over by one Judge, the Vicar-General of the Diocese. Now, I ask if this Court has been put in possession of a *scintilla* of law or authority, to prove that under the laws of Spain, the Vicar-General was constituted an ecclesiastical tribunal to try an individual for bigamy? By the well-settled principle of the laws of Nations, and the practice of all our courts, whenever a foreign judgment is introduced, it must be shown that it was rendered by a lawful court. Even in insurance cases, it is always required that full proof shall be given that the prize-court was a lawful one. It nowhere appears in this record, that the laws of Spain authorized a court like this ecclesiastical tribunal, and therefore the defendants have failed to make the first proof necessary to give force to that record.

And secondly, what proof have we of the authentication of this record,–where does it come from,–in whose possession has it remained for the last forty-eight years, and are its custodians entitled to the confidence of this court? When a country passes from one government to another, as Louisiana, in 1803, passed from Spain to France, and from France to the United States, the judicial records and public archives must pass with the cession, into the hands of the country receiving the new territory. Did the record in this case so pass into the possession of the only officers recognized by the laws and constitution of the United States—the civil officers? No. It has slumbered among the old church records,—the records of marriages and christenings from 1802 to the present time, in the hands of individuals not known to, or recognized by our courts. For all this court may know this record may have been got up within the last five years.

MR. DUNCAN. I would ask Colonel Grymes if the treaty of cession did not guaranty the people of this State all the rights and their courts all the validity possessed by them at the time of the cession?

MR. GRYMES. The treaty guarantied the religion, rights, and property of the people, but it did not provide that they should have the same form of Government nor did it recognize any of their ecclesiastical tribunals. Our laws know nothing of such tribunals. Their jurisdiction is confined to their own sect or denomination. The treaty did not guaranty that the people should have ecclesiastical courts. Under our law a church is no more than an individual. It is a private corporation. It derives all its life and vigor from an act of the Legislature. Its custody, therefore, is no more than that of an individual, and in this the Catholic church does not differ from that of the Baptists, Presbyterians, or Methodists. Are such records, then, as this much vaunted ecclesiastical proceeding admissible as proof of a judgment (even admitting there was a judgment) involving rights of property and questions of pedigree?

MR. DUNCAN. I would ask Colonel Grymes if the Supreme Court has not decided that the courts of Louisiana must take official notice of the laws of Spain?

MR. GRYMES. That is not the question now before the Court. I cannot undertake to say what the Supreme Court may or may not have decided. That tribunal

has decided that certain of the Spanish laws must be taken notice of, but it does not undertake to determine what portion of these laws are applicable to this State or not; for it is well known that all the laws of Spain did not extend to this colony. The decrees of the Council of Trent, for instance, were never in force in this State. But my point is, that there is no proof that this record is authentic—that it was handed down in the legal custody of officers known to our laws. If the Bishop was the custodian, he is certainly not recognized as the legal depositary of judicial records.

I have, therefore, shown that it is not proved that this record was that of a lawful court—that there is no proof that it has been kept by officers known to our laws, or properly authenticated; that there is no judgment in the case, but a mere order to suspend proceeding. But if not proof of a judgment, it is contended that the declarations in this record are good evidence. Let us examine that point. It certainly will not be pretended that any other deposition but that of Madame DeGrange will avail the party. Certainly they are not serious in relying upon DeGrange's evidence in his own favor, against an accusation of felony; nor upon that of Madame D'Orsi, who has married another man after her alleged marriage with DeGrange. We are narrowed down, then, to the testimony of Madame DeGrange. But is her deposition admissible in this case, when the witness is alive, and may be brought into this court to testify? Further, this deposition was taken in a proceeding, in which all the parties were interested.

I need not point out the interest of the other parties, but will confine myself to that of Madame DeGrange. Her husband was brought up for a crime, the penalty of which was death. She was cited by the prosecutor to testify against him. In those times, a criminal execution was a very terrible affair. It inflicted a lasting stain upon the family escutcheon. Its infamy extended to all the near relations of the party. Years could not wash it off from the name and history of the family. Such was the feeling under the Spanish Government of that time. Under these circumstances, Madame DeGrange was called up to testify. The question was directly put to her, if she had heard her husband had three wives, and did she believe it. Could she give any other answer but a negative one to such a question as that? Could she make a declaration that would consign her husband, the father of her children, to execution and infamy, and involve herself and family in disgrace?

But is this evidence admissible on the grounds on which hearsay evidence is permitted in matters of pedigree? This rule of evidence, it must be borne in mind, does not include every family tradition. It only extends to those facts of which the parties speaking had a personal knowledge; and to admit such evidence, it was indispensable to prove that the witness was dead; and further, that the statements were made at a time and under circumstances when the party had no interest or motive to misstate the facts. [Col. Grymes cited the case of the Berkley Peerage, 2 Starkie, 605, in which the declaration of the Earl of Berkley, as to the legitimacy of his son, was not admissible to establish the *status* of the child. The point went up before the twelve Judges, who united in excluding the testimony. Colonel Grymes read the opinions of the Judges in this case.] This principle was now the well established law of the United States Supreme and Circuit Courts, by whose rules and decisions this, being a question of evidence, must be determined. Madame DeGrange's evidence, therefore, is in this case not admissible, on the score of interest. How anxious soever she may have been to have this marriage annulled, she did not desire that it should be done at the sacrifice of the life of the father of her own children, and the eternal infamy of her own name and family.

The other record relied on by the defendants, is that of the alimony suit, brought in 1805, by Madame DeGrange against her husband. In this proceeding, which is a simple civil suit, the attorney of Madame DeGrange avers that she is the lawful wife of said De Grange. On what principle of law can this petition be used as evidence to prove any fact alleged or denied in the Bill? (On this point Col. Grymes cited Cresley's Equity evidence, to the effect that a Bill cannot be used as evidence to prove any fact alleged or denied in the Bill.) Does not every lawyer know that there is not one petition in ten, in which the parties ever see the petitions filed for them by their lawyers,—in which they know what their attornies put in their pleadings. Even if such declarations were made by the parties themselves, they would not be good evidence in another suit, according to the decision in the case of the Banbury Peerage, (1 Phillips Ev. 358,) much less can they be used when such declarations are made by the attornies.

The third record relied upon by the defendants is that of the proceedings for a divorce before the County Court of New Orleans, in which a judgment was rendered annulling the marriage to DeGrange. It will be necessary to direct your attention to the pleadings in this case. It was said by the gentleman who last addressed the Court for the defence, that the County Court of New Orleans had no right to grant divorces. This record is introduced by the defendants. It is set forth in and annexed to the answer of Chew and Relf, and now it forms one of the many discrepancies in the defence—that they seek to question and impugn their own testimony. They assert it was a good judgment, and, by so doing, declare the competency of the Court by which it was rendered. Will they now be permitted to come in, and contradict their own records, and show that the divorce was not rendered by a valid court. [On this point Col. G. read Cresley's Equity Evidence, 1 Phillips, 341.]

But further, though it may be true that the Spiritual Courts had exclusive cognizance of questions relating to marriages, it is equally true that Temporal Courts could decide incidentally on the validity of a marriage. There can be no question as to the competency of this Court to render this decree. The defendants have pleaded that it was a sentence annulling marriage. Its validity is, therefore, settled, and all we have to inquire is, what ought to be the force and effect of such a judgment of dissolution of marriage. This matter is fully determined in the case of Voorhies *v.* Bank of the United States, (10 Peters, 475.) where the principle is established that the judgment of a Court of general jurisdiction is conclusive evidence of what it purports to decide, until it shall be reversed on appeal or writ of error. Now, this too is a question of evidence to be decided by the Common Law, as settled by the United States Courts.

The defendants, however, say that the question is as to the force and effect of this judgment. They acknowledge that the petition was for a divorce, and set it up in their answer. Their object in so doing was to show that there was a previous marriage. What are the pleadings? The petition is lost, but the plea exists; it excepts to the jurisdiction of the court, as not extending to matters touching the validity of marriage. Now, a judgment is rendered in favor of the plaintiff, and damages assessed. Until the nullity of the marriage was declared, no damages could be recovered by a wife against her husband. According to the practice then prevailing, the court might accompany the judgment of divorce with damages. The issue, then, was joined on these pleas,—and they were more formal in their pleas then than they are now. The pleas were overruled. The defendant answered with a plea of not guilty, and the judgment was for the plaintiff, $100 damages. I maintain that such damages would not be given unless as a consequence on the annulling of the marriage, especially by a court presided over by that eminent jurist, Judge Workman. What is the irresistible inference from this state of facts? Why, that the plea to the jurisdiction had been overruled; and the case being tried on its merits, a general judgment was rendered for the plaintiff on the whole issue, and a decree of the nullity of the marriage entered. This judgment, according to the decision of the Supreme Court, before cited, is conclusive.

Judge McKinley. The counsel on the other side have suggested that the marriage might have been dissolved on other grounds than the previous marriage.

Col. Grymes. Some proof must be given of that Your honor does not bear in mind that the Court had no jurisdiction of suits for the nullity of marriages, but only of those touching the validity of a marriage. The laws of all countries lay down grounds for divorces—such as ill-usage, crimes, and offences. But proceedings relating to the validity of marriages are quite different from those touching divorces. The former imply that the marriage was illegal at the commencement, *ipso facto*, whilst the latter arises on matters subsequent to the marriage. The plea, therefore, that the County Court could not inquire into the validity of the marriage was therefore overruled, and a judgment was rendered for the plaintiff.

Colonel Grymes then read several authorities to show that actions in nullity of marriage were within the jurisdiction of the civil courts. A previous marriage does not dissolve the subsequent marriage, but it renders the junction impossible; it makes it a meretricious, not a matrimonial union. The second marriage is void *ipso facto*, 2 Phill. Eccl. Rep. p. 16, Shelmire on marriage. The civil law doctrine, on this subject, has been adopted in every part of the world, that a second marriage, pending a preexisting one, is void *ab initio*. I take this occasion to notice an authority cited by Mr. Taylor in his argument, contained in an opinion of Sir Wm. Scott, to the effect that it is necessary, in a prosecution for bigamy, to identify the parties. In that decision, Sir Wm. Scott, said that it too often happens, that persons are anxious to be released from the nuptial tie, and are not over scrupulous in discovering pretences; and, therefore, the identity in proceedings for bigamy must be proved by other parties than themselves. This would have been good authority in the County Court of Orleans, where Madame DeGrange brought her suit. But can you present any thing against that judgment now? Can you, thirty odd years after it was rendered, inquire if the County Court was satisfied of the identity of the parties. No doubt, DeGrange might then have appeared and denied his identity, and had an issue made up on that point. But it is now too late to inquire collaterally into that matter, and I must express my surprise that it ever was raised.

Having settled, as I think, the preliminary questions in the discussion of this case, I pass to the substantial matters of fact upon which the decision must, in the main, depend. But here I must express the opinion, that it is hard upon this court, whose patience has already been sorely taxed by this trial, that we should be compelled to discuss questions which were so fully and conclusively adjudicated in the Patterson case. Such a question is, as to the fact of Clark's marriage to Zulime DeGrange. That a witness has sworn to that fact, is patent on the record. This evidence is confirmed by the fact of the will of 1813, by Clark's acknowledgments to numerous of his friends, of the legitimacy of the complainant, by general reputation, and other corroborating circumstances—all establishing beyond the shadow of a doubt the *status* of this child, and entitling her to a decree of the court. I need not recapitulate the evidence on these points; many of the facts are proved by the defendants' own witnesses. Even De la Croix saw the will of 1813. It was in a package, and was placed in a black trunk. I refer to his testimony in the Court of Probates, when the complainant was endeavoring to get proof of the destruction of the will. The *status* and legitimacy of the child being established, her rights to four-fifths of the property follow as the legal effect of that fact.

To get around all this testimony, the defendants have taken various positions, in noticing which I shall be forced into the duty, by no means agreeable to my feelings, of reviewing and justifying the decision of the Supreme Court. First, they (the defendants) have undertaken to prove that the marriage did not take place, because Clark was not in the place where it is alleged the marriage occurred, at the time. It devolves upon us to show that both parties were in Philadelphia at the time when we aver the marriage took place. They were there from December, 1801, to April, 1802. Let us examine the movements of the parties about that time. Let us leave out of the question the testimony of the witnesses and be guided by the letters filed in the record. On 7th November we learn from a letter of Bradford to Chew and Relf, that Clark had left New Orleans 7th November, 1801. Next we have a letter dated Philadelphia, 18th January, 1802, written by Clark, but signed by Coxe, acknowledging the receipt of a letter from Chew and Relf, dated sometime in November, 1801. We find another letter in the handwriting of Clark, dated Philadelphia, 23d February, 1802; another still, a long and continuous letter, running from 23d February to 14th March; and lastly, we have a letter from Coxe to Chew and Relf, stating that Clark had left 23d April, 1802, for New Orleans. Here is clear and uncontradicted testimony, showing that Clark was in Philadelphia from January to 23d April, 1802. These are business letters, in which it appears Clark usually acted as penman and Coxe dictated and took the responsibility of the signature. On

the 18th February, 1802, we have a private letter from Clark to Chew and Relf, in which he refers to the state of affairs in Louisiana as being such, that he fears he will be compelled to return to his post as American Consul earlier than he wishes. Accordingly, we find he did start for New Orleans on 23d April, 1802. [Colonel Grymes here amused the court by reading extracts from the letters in the record, which exhibited considerable laxity in some of the opinions and practices of the parties. He read one letter from Clark, in which he advised Chew and Relf to supply all their ships with two sets of national papers, [it being the purpose of the Government to favor the merchants in this particular.] In another letter, Clark directs Chew and Relf to direct his private letters (not to Coxe,) but to Mr. Earle, showing that Coxe was not his confidant—did not participate in his little private affairs. So great was his apprehension that Coxe might get hold of his private letters, that he would not even have them directed to himself, but to Mr. Earle. Even in a little application for the sum of $2000, he desires the matter to be kept a secret from Coxe. He did not want Coxe to know he was spending money, because Coxe might be curious, and inquire into the objects of such expenditure, and thus his whole secret would get out. What did he want with the money? We say he wanted it to defray the expenses of his marriage, which he desired to keep from Coxe, the substantial member of the firm. We have then shown that Clark was in Philadelphia at the time when this marriage occurred. Now, it will devolve on us to show that Zulime was in Philadelphia at this time, and here we will show that Coxe is evidently mistaken in his statements of dates.

It is in proof that Zulime left here on the 9th November, two days after the time of Clark's departure, as indicated by Bradford's letter. She makes a power of attorney to a person here to attend to her business, and then proceeds to the North. They get to New York before Clark, owing to the ship he sailed on being compelled to put into Havana. They arrived at New York—from which they departed for Philadelphia, in pursuit of proofs of DeGrange's previous marriage. They went to Dr. Gardette, who informed them that he was a witness to the fact. It was about this time that Clark writes to Chew and Relf for money. Now, is there the slightest showing of improbability or impossibility against the positive statements of Madame Despau, that the parties were then and there married? Is it not clearly shown that the parties were in Philadelphia when, it is alleged, the marriage took place? Against this positive evidence, and these strong presumptions, scores of witnesses have been examined here as to their *belief* whether Clarrk was a married man or not.

But the defendants do not content themselves with this abortive effort to prove that the parties never came together at the time indicated for the marriage. They go further, and seek to discredit the testimony of Madame Despau on various grounds. First, they introduce the record of certain proceedings for a divorce, alleging incompatibility of humor, brought by M. Despau *vs.* Sophia Despau, his wife. The petition refers for the grounds of the application, to certain facts set forth in a petition of Madame Despau herself, for a divorce, in the Ecclesiastical Court. From this, the defendants have leaped to the conclusion that the cause of this matrimonial difficulty was the adultery of Madame Despau. It is not to be presumed, that she would accuse herself of adultery.

Mr. Duncan. It may have appeared otherwise than in her showing.

Mr. Grymes. Despau refers to her petition, and the gentlemun would have us presume that she alleged her own adultery. But what do these proceedings amount to? The parties had agreed to a separation. Subsequently, Madame Despau leaves and goes to the North with her sister. Does not the judgment of separation authorize her to go any where she choose? And yet we find him, in 1800, alleging against her that she had gone out of the territory without his consent.

In her absence, the Judge enters up a judgment against her, decreeing the forfeiture of her property. There is not a word about adultery in the judgment of the court. The husband, then, having got control of the community property, proceeded to dispose of it, and then goes off, leaving this lady and her children entirely destitute. Now, throughout this whole record, there is not a scintilla of proof to affect the moral character of Madame Despau—to cast a stain upon her name and reputation. She comes back from Philadelphia, retires to the then secluded and sparsely settled county of Opelousas, where she opens a school, which is patronized by the most respectable people of that section of the State, as a means of livelihood for herself and the children whom Despau had robbed of their property and left on her hands. Is an old lady, who has passed through scenes like these, and reached the age of eighty years, respected by all who knew her, to have her character blackened and polluted by a judgment like this, rendered against her in her absence and without proof?

But it is attempted to impeach this witness's testimony, on the ground that she locates the date of Clark's marriage in 1803, because of an impression that it was just before the cession of Louisiana. Is not this very natural? The subject of the cession of Louisiana from Spain to France had been much discussed throughout the country some time before the event. The heart of every Frenchman beat with joy at the idea of the restoration of this State to its first settlers. In December, 1802, we find that Clark writes from the River Mersey, that General Victor and the Prefect Laussus were about to embark with a large army to take possession of New Orleans. This report, of course, had reached New Orleans. Now, is there anything strange that a person of French extraction, referring to this event, should speak of it as occurring in 1803, when the French colors were run up in the Place D'Armes for a half hour, and then gave way to the flag of the United States? The rumors which had, no doubt, filled her ears in 1802, did not make so strong an impression as the tangible fact of the taking down of the flag, which occurred on 18th December, 1803. This accounts for her fixing the marriage in 1803; but she also adds that it occurred shortly before Clark left for Europe. In June, 1802, Clark writes from Cooper's Ferry. He is then on his way to Europe, for which he departs from New York 17th August. It is in the letter from Cooper's Ferry that Clark first refers to his embarrassments, growing out of the cotton frauds. There is, therefore, no room for discrediting Madame Despau on this ground. Her testimony, considering the long time which has elapsed since these transac-

tions, is consistent and reasonable. She stands before this court, free from any charges or suspicion—I won't say as a lady of virtue, because that is a relative term, but as a good, competent, lawful witness, whose deposition stands uncontradicted and unimpeached.

Somebody else then must be discredited. Bellechasse's testimony is also assailed. The counsel for the defence are quite inconsistent in their objections to witnesses. In some cases they object that the depositions contain discrepancies, in others they complain of the remarkable identity of the depositions with previous statements of the same witnesses. It is hard to please them. The objections to Bellechasse are various. First, they say that he spoke with reference to the Spanish Government and laws, in a Spanish sense, and that to be understood, we must refer to the laws and usages that prevailed under that Government; and that, as a man could not legitimate his child by an act in which it was referred to as a natural child, so, when Bellechasse spoke of the legitimacy of this complainant he had in view this feature of the Spanish law. There is something in all this too refined for my comprehension. I know of nothing in the law which compels us to go back to the French or Spanish customs and laws to understand what a witness who speaks a plain language means. Then again it is objected that Bellechasse's testimony is all stereotyped—that it was prepared by some body else, and that the commissioner who took it was privy to this arrangement. The testimony was taken in the usual manner. The other party had their option in selecting the commissioner; and I must confess, that this is the first time I have ever known a commissioner to take testimony in a suit, to be thus attacked and impeached without a particle of proof, as having been derelict in his duty, with having corruptly repaid the confidence placed in him by the court. Another objection to Bellechasse's testimony is founded on his friendship and intimacy with Relf which were inconsistent with his cognizance of the acts in which Relf is charged with having played a part. How, it is asked, could he believe that Relf, had suppressed his old friend's will and defrauded his daughter and yet afterwards keep up friendly relations with him? This suggestion renders it necessary that we should look more closely into the history and relations of these parties at that time. Chew and Relf, Clark and Bellechasse, were on very friendly and intimate terms. Bellechasse was a man of note. He had been a colonel in the Spanish service. Mr. Jefferson appointed him a member of the Legislative Council of the State. He was called on to command the militia of the State, at an important and alarming period. He became also president of the Legislative Council. Subsequently, his speculation failed, property depreciated, and he was compelled to retire to Cuba, as manager of a plantation for a relative. It appears that Bellechasse did complain to Relf, because he had not sent for him to attend Clark during his last illness. This was certainly very discourteous and improper in Relf, but it was not such conduct as would have justified Bellechasse in flying into a passion, and calling Relf a villain. There was, therefore, nothing which had occurred between Relf and Bellechasse seriously to disturb their friendly relations. Hence the correspondence between them, which is contained in the record. Relf writes to Bellechasse that he was suspected of treason to the United States. General Jackson suspected a great many persons in those times. Bellechasse replies to Relf's letter in a friendly view. What was there to induce him to be the enemy of Relf? His not sending for him during Clark's illness was a breach of etiquette. Is there any proof that he (Bellechasse) suspected Relf of suppressing the will of 1813? None at all. He had, therefore, no cause for hostility against Relf, and Colonel Bellechasse stands before this Court completely justified, as a man of honor and truth—a man of great integrity, and strong national and political feelings, such as he was always esteemed in this country. His conduct to Relf was that of a gentleman, and not of a blackguard and bravo, as it would have been, if he had got into a passion, and hurled all sorts of hard names at Relf, for the discourtesy of not sending for him during Clark's last illness

I have shown that Bellechasse's testimony is perfectly coherent, and consistent with probability and the facts, and that his friendly relations with Relf constitute no good ground for attacking it. The friendly correspondence between Relf and Bellechasse was previous to the discovery of the acts of the defendants, which were believed to be in fraud of complainant's rights. [Here he read extracts from the testimony of Bellechasse, which detailed the circumstances attending the death of Clark, and the declarations of Pitot that the will of 1813 had been destroyed by Relf.] Preval, in his deposition, says he affixed the seals to Clark's papers. He looked particularly for his last will, and searched a black trunk, where he was told it would be, but he could not find it. After he had sealed the papers, Mr. Relf handed him a sealed package, which he (Mr. R.) thought contained his will, and requested him to give it to the Court of Probates. Now, two things are shown by this testimony: 1st. That he looked in the black trunk, and that he made strict search immediately after the death of Clark for his will of 1813. 2d. After affixing the seals, and not during the act itself, Relf gave him the package, and without telling where he obtained it.

Mr. Duncan: I would call Colonel Grymes' attention to the process verbal of Preval, which states that Relf gave him the package which was taken from a black trunk, and the process verbal was dated four days after Clark's death.

Colonel Grymes: The deposition of Preval (taken in 1849,) says the seals were affixed on the day of the death of Clark, at the request of Relf. Pitot and De la Croix were the witnesses. So that Pitot must have known on that day the absence of the will of 1813, and that the only will found was that of 1811. I need not say olographic wills are usually marked on the envelope and with the date.

It is not astonishing that De la Croix, when he found Clark dead, should visit Pitot, and from him should learn the loss of the will of 1813, and his indignation at the conduct of Relf. There is nothing in the record which affects the credibility of Bellechasse. He left New Orleans in 1814 and settled in Cuba.

Judge McCaleb: The date of the process verbal of August 16th, might have been the day after it was commenced, as it is very usual for notaries to begin process verbaux on one day and continue them over to the next.

Mr. Grymes: So much for Bellechasse.

The credibility of Madame Caillavet is attacked because she had sworn that Clark had frequently told her he was married to Zulime, and this attack is founded on a little deposition taken before the Probate Court, in which she said that she went to France immediately after the date of her sister's marriage, and therefore she could not have seen Clark. [Mr. G. read her deposition and argued that it did not state that she went to France, but that her husband did so. This construction of the ambiguous words is borne out by other depositions, which show that she left in 1807. Her testimony, therefore, is perfectly consistent and unassailable.]

Thus, may it please your honor, have I established the birth, the parentage, and all the requisites of a legal *status* of the complainant. I have shown the marriage of her parents, her birth after such marriage, and her heirship to four-fifths of his estate.

These facts being established, the law comes in and entitles her as only forced heir to the whole of Clark's property, if he died intestate, and to four-fifths if he made a will in favor of any one else.

The next proposition of defendant's which we have to notice, is the plea of good faith. To determine this question, we must refer to the pleadings in the case. There is no statement in the plea, and no evidence in the record, which puts these defendants in the position of *bona fide* purchasers, according to the rules of chancery, which alone are to govern here, as decided by the Supreme Court in the case of Livingston *vs.* Story. In that decision, the Supreme Court expressed its surprise, that a former judge of this court, now dead, should deny so clear a proposition as this. Referring therefore, to the chancery doctrine on this subject, what do we find to be the well settled principle in regard to possession in good faith. In the leading case of Brown *vs.* Childs, Justice Baldwin has laid down the whole law on this subject, with a clearness, a force, and perspicuity that are truly admirable, and render any further exposition quite unnecessary. [Col. Grymes here read that decision, the chief point of which was that a party in possession, claiming as *bona fide* possessor, must have a legal title—an equitable title will not do. If he has the legal title, and has purchased without notice of an outstanding title, he will be protected. But this will not be done on a mere averment. He must set up payment specially; a mere recital of it in the deed will not do. He must state that his vendor was seized and in possession—his interest must be vested in fee, and not a mere equitable possessor.]

This, so far as this Court is concerned, I apprehend is the binding law. I cite also on this point, 2 Story's Rep., 456, 7 John, Chan. Rep. 65. (This decision establishes the point, that defendants must aver and prove actual payment before notice.) 7 Peters, 271.

Here, for the first time, the local law of the State is introduced into the case. Up to this time it has been controlled by the general rules of evidence which obtain through the Union. That point is, whether these parties have really the *legal title* under the law of Louisiana. On this point, I read from 3 Toullier to 150, that where there is a donation exceeding the quantity disposable by law, that donation must be revoked and reduced to the disposable portion, when the forced heir presents himself; and holders under the donee have no better rights than he had himself—3 Toullier, No. 150.

The counsel for the defence has quoted the decisions from the Journal de Palais of the Court of Cassation, to the effect that when the universal legatee went into possession of the property of a succession, and another and nearer relative afterwards appeared and demanded the property, the then possessors, who had purchased in good faith, would be protected. Now, sir, by reference to the decision in these cases, I find that this opinion is based upon a decree of the Roman Emperor, Adrian, as preserved by Ulpian.

There was a great contest among the French commentators, on the construction of the article of the Code, "That no one could sell the property of another." The Court of Cassation decided in favor of the edict of the Roman Emperor—that when an apparent heir, acting *as heir*, sold the property of the succession, they would protect the purchasers buying in good faith and without notice of the existence of the true heir. Duranton and Toullier are against the Court of Cassation, which is sustained by Merlin.

The judgment of the Court of Cassation on articles of the Code Napoleon copied into ours, are received in this State as authority, from the high character of the French courts, but not as of binding effect. But when the courts travel out of the Code, and found their opinions on a Roman edict which is not in force, then these decisions are not to be received in this State for any purpose. We have the opinions of Toullier and of the Court of Cassation—now who shall be the arbiter? We suppose it should be the Courts of the United States. To find out what is the local law, we must appeal to the decisions of our own State courts. And here we find, in a case remarkably similar to this, that our Supreme Court fully endorses the doctrine of Toullier and adheres to the Code Napoleon, which is identical with our own code on this point, in preference to the decree of a Roman Emperor. [Colonel Grymes here read a decision from 12 Robertson, Louisiana Reports, in which the doctrine of Merlin and of the Court of Cassation is repudiated, and that of Toullier, Duranton and Tropling is adopted.] Such is our local jurisprudence on this subject. And what now becomes of this doctrine of the Roman Emperor and of the Court of Cassation, so much relied on by the counsel for the defendant. The Supreme Court of the United States have decided the same point in the same way.

And now I ask, if these defendants bring themselves within the rule in 10 Peters. Are they purchasers in good faith who possess the legal title? Our courts have decided that the legal title does not pass in such sales as they hold under—that the party only conveys such interest as he had. The legal title to this succession vested in Mrs. Gaines as soon as Clark died. The title of the legatee who entered upon the property was a mere conditional one (not a fee) dependant upon the appearance of a nearer heir. And here I conclude my remarks upon the only question of local law involved in this case. By reference to the operative clauses in the deeds in this suit, the court will perceive that in all the cases before the court, the executors sell the rights of Mrs. Clark, by virtue of the will—all the rights of property which

the succession of Clark had or may have in the property conveyed by these premises. They only sold the title of Mrs. Clark in the succession—all the rest of the deed was mere recital. There was therefore no legal title sold to any of the purchasers, it is a mere quit claim, a sale of the equities and rights of the party.

I pass now to the point of prescription by which defendants hope to retain possession of this property. In considering this point, there is some discrepancy in the position of the defendants. At one time they view the estate as accepted by Mrs. Clark, and at another as a vacant estate. We will accept either ground. First, let us assume that it is not a vacant estate—then the prescription is thirty years, 2 Grenier's Donations, No. 652. Between two heirs, one in possession and the other absent, there is only the prescription of thirty years. [On this point Col. Grymes read the Code of 1808, art. 94. 8 Duranton, 399. All showing that prescription did not run against parties until they possessed the faculty of accepting or renouncing, nor against minors and absentees.]

Mrs. Gaines became of age in 1825. She was born in 1804 or 1805. The suit was brought in 1836, which would give her abundant time, (nearly twenty years within the time when prescription would begin to run.) This is on the hypothesis that it is not a vacant estate. But suppose we consider that it is a vancant estate.

Mr. Duncan: I shall so consider it.

Mr. Grymes: The gentleman is willing to consider it as a vacant estate. Then what becomes of the position that Clark was seized and in possession? Does the gentleman abandon his whole case? It appears to me that the gentleman narrows his whole case down to the single point of prescription—if he fails in this, the case is gone. Well, let us see how the prescription will apply as a vacant estate. In that case, Chew and Relf, not possessing for themselves, but for others, the old code, art. 45, provides that no prescriptions run in favor of persons acting in a fiduciary capacity. An estate is said to be vacant, when no person claims its possession, either as heir or under any other title. The only question, then, is, was this estate unclaimed by any one? Old code, p. 162; arts. 74, 75, 77. The succession is accepted when the heir or legatee does any act which he could legally perform as heir? This is a tacit acceptance. It is express, when in some written instrument he assumes to be the heir or legatee. Did Mrs. Clark accept the succession? I refer to the act of attorney in favor of Relf and Chew, in which she expressly declares herself the heir and legatee of her son, authorizing them to take possession of his estate.

In the account current between Coxe, and Relf and Chew, Mr. Coxe charges moneys paid during the year 1814 to Mrs. Clark. [Read the deed of sale from Relf and Chew, as executors and agents, and for themselves, to Coxe, of half the Maison Rouge claim, and cited authorities to prove that these acts amounted to an acceptance of the succession.

That fact being established, the question comes up, When did prescription commence? We say the defendants can only claim its protection from 1820, the time of their purchase; but Mrs. Gaines was a minor up to 1825, 6, or 7, as the court may determine. The court is to ascertain when complainant became of age. Some of the witnesses think she was born in 1804; others, in 1805; others, again, in 1806. I will take either period. If she was of age in 1825, then, for the first time, prescription began to run—and this is admitting that Mrs. Clark was in possession. We had 20 years from 1825, to make our claim against any body. This suit was commenced in 1836—eleven years after she was of age. She was an absentee, and the shortest prescription against her is that of twenty years. They were cited in this suit long before the prescription had accrued.

The counsel have talked a good deal about the partnership between Clark and Relf and Chew. In 1841 the articles were first published. They were set up by Relf and Chew in their answer in 1845.

There is an allegation in the bill that Relf and Chew took possession of all the papers of Clark. They were, in fact, entitled to them, as executors. Their answer does not explain where these articles were found—whether among his papers or theirs. They bear date only a few weeks before his death. In that paper it is stated that he is to furnish a schedule of all the lands which are to go into the partnership; and second, neither of the parties is to withdraw from the concern a sum beyond a certain amount, which is left in blank. There is to be a schedule of the debts of Clark, which are to be paid by the concern. But these schedules were never exhibited. They were signed with these imperfections. Is it not more probable that these articles were still in the possession of Clark, not yet delivered, because not fully executed?

This is a conditional contract, not executed. The basis of the agreement was determined; but the particulars were not fully arranged, and the death of Clark put a stop to the entire business. But none of the property claimed in this suit was intended to be included in this partnership. The property is limited to that held by Clark in connexion with Cox, and not the individual property of Clark. Not an acre of the land now claimed is embraced in these articles. The sale of the Maison Rouge claim is the only one made by Relf & Chew in their own names; but this land originally belonged to Clark & Cox, and Cox, in purchasing it, required the warranty of Relf & Chew.

There is another reason why these articles must be rejected. There is a material alteration, evidently made after their execution. and not accounted for. The addenda that the Henderson plantation just bought by Clark was not included in the partnership, was not on the paper when signed, but must have been addded after, and there is no proof when it was inserted. [Authorities cited.] This vitiates the deed.

The seventh proposition of defendants was the homologation of the executor's accounts by the Probate Court. He cited 11 Rob., 120, Baldwin *vs.* Carleton, to establish the right of the minor to open such a judgment. (2 L. R. 147.) The executor who presents his accounts, and prays for a discharge, must cite the heirs. But in 1839, when the executors filed the accounts in the Probate Court, this court had already jurisdiction of the matter, and it could not be deprived of its jurisdiction in the manner sought here.

And thus, may it please the court, have I attempted to reply to the arguments of the counsel for the defendants. It has been no light task to follow them in their desultory course.

I think I have shown to this court the legal *status* of this complainant, that there are no equities in the defendants' answers, and that law and justice, and equity entitle the complainant to recover this property.

CONCLUSION OF THE TRIAL.

The speech of Colonel Grymes being concluded, the case was submitted to the Court, when Judge McKinley stated that the Court would devote all its time to its examination and consideration, in order that a speedy judgment might be rendered. The Court then adjourned.

The trial of this great suit commenced on Wednesday, the 23d of January. The 23d, 24th, 25th, and 26th of that month were consumed in reading the testimony, which is contained in a printed volume of twelve hundred pages. On Monday, the 28th, the argument was opened by Mr. Preston, (by special leave,) for the defendants. Mr. Preston spoke the whole of Monday and a portion of Tuesday. On that day Mr. Wright commenced his argument for the complainant, and closed on the next, when Mr. Campbell followed, also for the complainant. He closed on Thursday, the 31st January. On Friday Mr. Duncan commenced his argument, for defendants, and closed on Tuesday, the 5th February, when Mr. Taylor commenced, also for the defendants, and concluded on Wednesday, the 6th February. On Thursday, the 7th February, Mr. Grymes commenced his argument, for complainant, and closed it and the case on Saturday, the 9th February, when the case was given to the Court. The reading of the testimony occupied four days, and the argument twelve days.

JUDGMENT.

On Thursday, the 21st February, a large crowd of lawyers and others, attended the Court to hear the decision in this great case.

Immediately on the opening of the Court, Judge McKinley stated that, as he and his brother Judge had differed on the question, as to the force of the decision in the Patterson case, he, thinking that that judgment was binding, and Judge McCaleb not considering himself bound by that judgment, he (Judge McKinley) had determined to retire from the bench and allow the District Judge to decide this case. He was induced to do this, because he was a Judge of the Supreme Court, and would have to sit in this case when it came up before that tribunal; that he never knew a case in which the Supreme Court overruled its own decision, and he would consider it disrespectful to his brother Judges to undertake to review and reverse their judgment. There was also another reason why he should leave the decision to be rendered by Judge McCaleb, who was better acquainted with the local or State laws of Louisiana than he was, and the case would go up to the Supreme Court with an opinion written by a Judge familiar with the peculiar jurisprudence of this State. He thought this the most satisfactory course, as it would lead to the early decision of this case.

Judge McKinley also stated that if, as defendants alleged, the Patterson case was a made-up case, it was a very curious made-up case, as the material evidence in that case did not differ from this. There was a great deal of irrelevant and inadmissible testimony in the case, which he should exclude, leaving it, in no essential point, different from that of the Patterson case.

Judge McKinley then ordered the clerk to enter up a minute, that the Circuit Judge retired from the bench during the decision of this case.

Judge McCaleb then read the following decision.

MYRA CLARK GAINES, Complainant, } In Equity.
vs.
CREW & RELF, and Others.

When I consider the decision of the Supreme Court of the United States, in the case of *Gaines and Wife* vs. *Patterson*, (6 Howard) I feel the utmost diffidence in assuming, as I feel it my duty to do, the responsibility of examining *de novo* the merits of this controversy. I disclaim any want of respect for that decision, or for the high tribunal from which it emanated. But I feel most solemnly convinced, that the merits of the present case, have not been fully and fairly settled by that decision. Apart from the new facts and circumstances developed in the progress of the trial, which present the rights of the parties in a different light, the testimony of Patterson himself, who has been examined as a witness, discloses enough to lead my mind irresistibly to the conclusion, that there was no serious contest before the court. It was a proceeding in which it is perfectly apparent, that, whatever might be the result, the defendant was to suffer no loss. His own statement shows that he is now in possession of the very property which was the subject of controversy. In consideration of his willingness to aid the complainants in obtaining a judgment of the court settling important principles of law in their favor, he has been rewarded by a donation of the whole property. Even the costs and expenses incurred in the litigation have been paid by the victorious party.

The counsel who argued the cause and the courts which decided it, were ignorant of the private, amicable understanding that existed between the parties; but this fact does not, in my opinion, relieve the case from a taint of collusion, which renders the judgment itself, of no binding force as *res adjudicata*. It is impossible not to discern at a glance the advantages so willingly surrendered by the defendant by his refusal to join with the other defendants in the resolute resistance they have uniformly made to the claim asserted by the complainant. And it is apparent from his own testimony that nothing short of a satisfactory assurance that he would become the gainer instead of the loser, by the part he has acted, would ever have operated as an inducement to place himself in a false position before the high tribunal whose equitable relief he but nominally invoked.

The complainant in this case sues as the only legitimate child of the late Daniel Clark, who died in this city on the 13th of August, 1813. She alleges in her bill that the said Daniel Clark executed a will in 1813, in which he devised and bequeathed all his estate, real and personal, to her, the complainant, and "did also therein and thereby declare her to be his legitimate daughter, and did make and order therein other dispositions and bequests;" that the bill of 1813 operated a full and perfect revocation of the former will alleged to have been made by the said Daniel Clark in 1811;

that the said will of 1811 ought to be set aside, and the said will of 1813 established and confirmed; and the real and personal estate of said Clark declared to be descended to her," the complainant. "Yet," continues the bill, "your oratrix, by the advice of her counsel, hereby declares that, for the purposes of this suit, she will not insist upon the said will of the said Daniel Clark, made in 1813, except for the purpose of availing herself of the devise therein contained in her favor, but for the purpose of availing herself as far as in law it is competent to do, as a declaration of her father, the said Daniel Clark, of the legitimacy of your oratrix, and for establishing her pretensions, in this bill set forth, as the forced heiress of the said Daniel Clark, and as such forced heiress, her rights to the legitime of four-fifths of the estate of said Daniel Clark which he held at his death." In a preceding part of the bill it is alleged that the will of 1813 alluded to, was "fraudulently concealed, suppressed or destroyed" by the defendant, Richard Relf, and the revoked will of 1811 produced and procured to be admitted to probate, as the last will of the said Daniel Clark. The will of 1811 is in the following words:

"In the name of God, Amen! I, Daniel Clark, of New Orleans, do make this my last will and testament:

First. I order that all my just debts be paid.

Second. I leave and bequeath unto my mother, Mary Clark, now of Germantown, in the State of Pennsylvania, all the estate, whether real or personal, which I may die possessed of.

Third. I hereby nominate and appoint my friends, Richard Relf and Beverly Chew, my Executors, with power to settle everything relating to my estate. New Orleans, 20th May, 1811. Signed, Daniel Clark."

This will was duly admitted to probate, and letters testamentary granted to the executors therein named. By virtue of these letters testamentary, and also by virtue of a full power of attorney from Mary Clark, the sole heiress and legatee mentioned in the will, it is contended, on behalf of the defendants, that the property in controversy was sold and purchased.

Without noticing minutely the various allegations in the bill, and denials in the answer, I shall proceed to examine some of the most important issues which have been distinctly presented by the pleadings, and argued with great ability at the bar.

The first and most important of these issues, involves the legitimacy of the complainant. It has been raised by the positive denial in the answers of the defendants, and it is incumbent upon the complainant to prove it. She alleges that her father, Daniel Clark, was married to Zulime née Carrière, in the city of Philadelphia, in the year 1803, and that she is the legitimate, and the only legitimate offspring of that marriage. The defendants deny that Daniel Clark was married to said Zulime at the time and place alleged, or at any other time or place, and they aver that, at the time said marriage is alleged to have taken place, the said Zulime was the wife of one Jerome DeGrange. They also deny that the complainant was the child of Daniel Clark, and aver that if she be, she is an adulterous bastard, and incapable of inheriting the property of her father.

The first question to be determined is, does the evidence on this record establish the marriage of Daniel Clark and Zulime Carrière? It has been my own desire to be relieved from the responsibility of deciding this question, by directing an issue out of chancery to be determined by the verdict of a jury. I have regarded this question as one peculiarly proper to be determined by a jury. It is apparent to any one, who will look at the record, that the evidence of the witnesses is of the most contradictory character, and I have thought that in a case where a conflict of evidence presented any barrier to the attainment of truth, it was peculiarly the province of a jury to aid the conscience of the court, by passing upon the credibility of the witnesses, who have been examined in the cause.

"When facts are to be decided," says Gresley in his Treatise on the Law of Evidence in Courts of Equity, (p. 522,) "which from their nature, demand publicity for their trial, as a question whether a party is the heir at law of an intestate estate, or where some person interested has a peculiar right to the fullest investigation, (as an heir who is questioning a bill; or when the Judge really feels a difficulty too great to be removed by the mere substitution of the master's opinion for his own; or where he thinks it better that the responsibility of deciding should be thrown from himself upon that evanescent tribunal, a jury.) In these, and other cases, the Court of Equity calls in aid the Common Law tribunal, to declare its opinion on a matter of fact. Some issues have, of late years, been granted almost of course, as an issue to try the validity of a modus, or an issue of *devisavit vel non*."

In as much as it will not be in my power to avail myself of the assistance of a jury in the present case, for the want of a concurrence of a full court in the necessity of sending any issue of fact out of Chancery, I shall proceed to the examination of the evidence on the record, with that candor which the importance of the case so imperatively demands. And I shall do so fully impressed with the correctness of the remark of Mr. Gresley in his Treatise just cited, (p. 468,) that "the *credit* which the court will give to the testimony of an individual witness, or to the whole mass combined, varies so much, that the advisability of examining them and the topics of their examination, must be dictated by the facts, experience, and common-sense." "The disadvantage," he continues "under which the court must always labor, with respect to them is obvious; it is quaintly expressed in the Treatise of the Court of Star Chamber, thus: 'Now, concerning the persons of witnesses examined in court, it is a great imputation to our English Courts, that witnesses are privately produced, and how base or simple soever they be, although they be *testes diabolares*, yet they make as good a sound, being read out of paper, as the best; yea, though a lewd and beggarly man take upon him the name and person of an honest man, and be privately examined, this may easily be overpassed, not easily found out; whereas, in Ecclesiastical Courts, the witness must be sworn *in court*, in presence of the proctor of the other side at least.'"

These remarks of a learned and ingenious author, often appealed to by the able solicitors of the complainant, suggest the necessity of great care and caution, on the part of the Chancellor, in weighing the testimony of witnesses who are never seen by the Court, and who, as it happens with reference to many whose testimony appears on the record of the case now under consideration, live beyond the process of the Court, and speak a foreign language.

The only witness whose testimony is relied on to prove the fact of the marriage of Mr. Clark with Zulime Carriere, is Madame Despan, the aunt of the complainant. She is, at least, the only witness who swears to the fact from personal knowledge. Her testimony has been taken at three different times—one in 1839, once in 1845, and again in 1849.

In 1839 she says: "I was well acquainted with the late Daniel Clark, of New Orleans. He was married in Philadelphia, in 1803, by *a Catholic priest*. I was present at this marriage. One child was born of that marriage, to wit: Myra Clark, who married William Wallace Whitney, son of Gen. L. Whitney, of the State of New York. I was present at her birth, and know that Mr. Clark claimed and acknowledged her to be his child. She was born in 1806. I neither knew, nor had any reason to believe that any other child besides Myra was born of that marriage. The circumstances of her marriage with Daniel Clark were these: (By *her*, it is of course presumed that the witness means *Zulime*; though up to this point in her testimony she does not mention her name.) Several years after her marriage with DeGrange, *she heard that he had a living wife; our family charged him with the crime of bigamy in marrying said Zulime; he at first denied it, but afterwards admitted it, and fled from the country. These circumstances became public, and Mr. Clark made proposals of marriage to my sister with the knowledge of all our family.* It was considered essential, first to obtain record proof of DeGrange having a living wife at the time he married my sister; to obtain which, from the records of the Catholic Church in New York, (where Mr. DeGrange's prior marriage was celebrated,) we sailed for that city. On our arrival there we found *that the registry of marriages had been destroyed.* Mr. Clark arrived after us. We heard that a Mr. Gardette, then living in Philadelphia, *was one of the witnesses to Mr. DeGrange's prior marriage.* We proceeded to that city and found Mr. Gardette. He answered, that he was present at said prior marriage of DeGrange, and that he afterwards knew DeGrange and his wife by this marriage; that this wife had sailed for France. Mr. Clark then said, you have no reason longer to refuse being married to me; it will, however, be necessary to keep our marriage secret till I have obtained judicial proof of the nullity of your and DeGrange's marriage. They, the said Clark and the said Zulime were then married. Soon afterwards, our sister, Madame Caillavet, wrote to us from New Orleans, that DeGrange's wife, whom he had married prior to marrying the said Zulime, had arrived at New Orleans. We hastened our return to New Orleans. He was prosecuted for bigamy, father Antoine, of the Catholic church, taking part in the proceedings against DeGrange. Mr. DeGrange was condemned for bigamy in marrying the said Zulime, and was cast into prison, from which he secretly escaped by connivance, and was taken down the Mississippi river by Mr. Le Breton D'Orgenois, where he got into a vessel, escaped from the country; and, according to the best of my knowledge and belief, never afterwards returned to Louisiana. *This happened in* 1803, not a great while before the close of the Spanish government in Louisiana. Mr. Clark told us, that before he could promulgate his marriage with my sister, it would be necessary that there should be brought by her an action against the name of DeGrange. The anticipated change of government created delay, but at length, in 1806, Mr. James Brown and Elligius Fromentin, as the counsel of my sister, brought suit against the name of DeGrange, in the City Court, I think, of New Orleans. The grounds of said suit were, that DeGrange had imposed himself upon her at a time when he had a living, lawful wife. Judgment in said suit was rendered against said DeGrange. Mr. Clark still continued to defer promulgating his marriage with my sister, which very much fretted and irritated her feelings. Mr. Clark became a member of the United States Congress in 1806. Whilst he was in Congress, my sister heard that he was courting Miss Caton, of Baltimore. She was much distressed, though she could not believe the report, knowing herself to be his wife. Still, his strange conduct in deferring to promulgate his marriage with her had alarmed her. She and I sailed for Philadelphia, to get proof of his marriage with my sister. We could find no record, and were told that the priest who married her and Mr. Clark had gone to Ireland. My sister then sent for Daniel W. Coxe, mentioned to him the rumor; he answered that he knew it to be true, that he, (Clark,) was engaged to her, (Miss Caton). My sister replied, that it could not be so. He then told her that she would not be able to establish her marriage with Clark, if he were disposed to contest it. He advised her to take counsel, and said he would send one. A Mr. Smyth came and told my sister that she could not legally establish her marriage with Mr. Clark, and pretended to read to her a letter in English, (a language then unknown to my sister,) from Mr. Clark to Mr. Coxe, stating he was about to marry Miss Caton. In consequence of this information, my sister Zulime came to the resolution of having no further connection or intercourse with Mr. Clark, and soon afterwards married Mr. Gardette, of Philadelphia. The witness further states, that she became acquainted with DeGrange in 1793. He was a nobleman by birth, and married Zulime when she was thirteen years old. Zulime had two children by him—a boy and a girl; the boy died, the girl is still living, (1839); her name is *Caroline*, and married to Dr. Barnes. Witness was present at the birth of these children. The marriage of Zulime was a *private one.* Besides the witness, Mr. Dorsier, of New Orleans, and an Irish gentleman, a friend of Clark, from New York, were present at the marriage. *A Catholic priest performed the ceremony. Before the detection of the bigamy of De Grange*, Zulime had a son, who died, and a daughter, called *Caroline*, which bore his name. Caroline was born in 1801; witness *was present at her birth*, as well as that of her brother. The natural language of witness is *French, but her nephew is well acquainted with the English language, and when in need of a translator, she applies to him.*

I have, in justice to this witness, stated all the material facts detailed in her testimony taken in 1839, before I proceed to compare it with that subsequently taken in 1845 and 1849. Her testimony taken in 1845, is, for the most part, a repetition of what she stated in 1839, with the addition of some facts which may be important in weighing her credibility. For instance, she states that the first time she saw Mr. Clark, was *in the latter part of* 1802. She was shortly *afterwards* introduced to him by Col. Bellechasse. Zulime was married to Mr. Clark, as *Miss Zulime de Carriere.* The last time she saw DeGrange was in 1803. In 1849, she says she

was well acquainted with Daniel Clark; that her acquaintance with him commenced about, or not long after 1797. His marriage with Zulime, to the best of her recollection, took place in 1803, *although there are some associations in her memory which make her think it not impossible that the marriage may have taken place in* 1802. Her impression is that it took place in 1803. It was, she remembers a short time previous to Mr. Clark's departure for Europe.

Let us first consider this evidence with reference to itself alone. It was taken at three different periods, and, we must presume, was not given without much reflection. In the year 1845, she says, that the first time she saw Daniel Clark was in the *latter part of* 1802, and even then, had no acquaintance with him, for she *was shortly afterward, introduced to him by Col. Bellechasse.* In 1849, she says, her acquaintance with him commenced about, or not long after 1797. In 1839, she states, without any qualification whatever, that Clark was married in 1803. In 1845, she again states this fact, and on both occasions, she refers to other facts with which she couples this important event, so as to render it perfectly certain that the marriage did take place at the time and place stated by her. For instance, in 1839, she says that the proposals made by Clark to Zulime, *were made after the detection of the bigamy of DeGrange.* This she declares in unqualified terms, was in 1803, and not a great while before the close of the Spanish government in Louisiana. In 1845, she again says, that DeGrange *was convicted of bigamy in* 1803. In 1849, in referring to the *conviction* and *escape of DeGrange*, she, for the first time, omits to state the year, but says that it happened not a great while before the cessation of the Spanish government in Louisiana. In this deposition of 1849, we find this witness for the first time expressing the slightest doubt about the marriage of Clark having taken place in 1803. She says, "*to the best of my recollection it was in* 1803, *although there are some associations in my memory* which make me think it not impossible that the marriage *may have taken place in* 1802; my impression, however, is, that it took place in 1803. It was a short time before Mr. Clark's departure for Europe."

Now, it is evident that the doubt was thus started for the first time in the mind of the witness, by the efforts which the defendants were making to show that it was impossible that the marriage could have taken place in 1803, inasmuch as Daniel Clark was not in the city of Philadelphia during the whole of that year. The efforts of the defendants on this point were completely successful. Indeed, the solicitors for the complaint admit, that the marriage must have occurred about the last of 1801, or the first of 1802. They admit that if it did not take place between the months of November 1801, and August 1802, there was no marriage at all. This is a latitude of proof, which, I apprehend, the laws which were in force at the time this marriage is alleged to have taken place, would never have sanctioned. In questions involving legitimacy, the time of marriage was of the utmost importance in cases like the one under consideration. With the conflicting evidence before us, we may all ask, when Zulime ceased to become the wife of DeGrange, and when she legally became the wife of Clark? Let us, for instance, suppose that the marriage took place as Madame Despau has declared in one of her depositions, in 1803, about the time the Spanish government ceased in Louisiana. This we know historically, was near the close of 1803, and not, as contended by the solicitor of the complainant, at the date of the treaty of St. Ildephonse of 1800, which was a secret treaty and never known in Louisiana until a short time before the delivery of the country by Spain to the French authorities, by whom it was almost immediately surrendered to the United States. We have, then, most conclusive evidence that the complainant was born in June, 1804. And the old Code p. 44, art. 8th, which contains substantially the provisions of the Spanish law, declares that the child who is born previous to the 180th day of marriage, is not presumed to be the child of such marriage. "And article 9th declares that it is the same, that is to say, the same presumption exists, with respect to the child born 300 days after the dissolution of the marriage, or after sentence of separation." Now, we have record proof that DeGrange was here in New Orleans, as late as the 6th of December, 1805, and we have evidence of the same character, that the judgment against him which has been called a judgment of divorce, (though the record does not show the grounds upon which it was given,) was not rendered until July 24th, 1806. What can be the object of such legal presumptions, if the party who claims rights under a contract of marriage, can be permitted to fix the date thereof, at any time within the space of eleven months. If time be important in a controversy of this nature, and the arguments show it to be important, then the complainant should be bound to fix definitely the date of the marriage, by virtue of which all her rights have accrued. This was in the contemplation of the Spanish law, whose whole policy was opposed to clandestine marriages, and required a registry of marriages to be kept. If it be beyond the power of the complainant to fix definitely the date of the marriage in this instance, it is a misfortune, for which the authors of her being, and not the defendants, were responsible. The rule which has been followed in this case, is one which, in my judgment, is calculated to lead to dangerous consequences. Upon the testimony of Madame Despau alone, the Supreme Court of the United States have solemnly decided in the case of Patterson, that Daniel Clark was married in Philadelphia in 1803. The attention of the defence in this case, was naturally directed towards that particular date, and they have shown most conclusively that the marriage never could have taken place at the time and place thus definitely fixed by the testimony of the only witness who pretends to any personal knowledge upon the subject.

The evidence in the record shows most satisfactorily that the complainant was born while DeGrange was still in New Orleans, and before any judgment of divorce was given against him; and the Supreme of this State in the case of *Tate* vs. *Penne*, (7 N. S. 554,) have said that the law considers the husband of the mother, as the father of all the children conceived during the marriage. In case of *voluntary separation*, access is always presumed unless the contrary be proved: the presumption of paternity is at an end, when the remoteness of the husband from the wife has been such that co-habitation has been physically impossible.—Code of 1808, p. 45, art. 7, 10 & 11. "The evidence," again remarks Judge Porter, who delivered the opinion of the Court, "creates a presumption of absence and non access: but that will not do in cases like this.

The legal presumption of the husband being the father, and of access being presumed in cases of voluntary separation, can only be destroyed by evidence bringing the parties within the exception the law has created to the rule, namely, the *physical* impossibility of connection—*moral* will not do. Now, that physical impossibility can only be shown by proving the residence of the husband and wife to be so remote from each other that access was impossible."

These principles of law, thus clearly recognized, repel the presumption of the legitimacy of complainant, sought to be established by the testimony of Madame Despau; and they will apply with greater force to the merits of this controversy, when we hereafter examine the question involving the legal validity of the marriage with Clark, contracted before an action of nullity had been instituted, to set aside the marriage with De-Grange.

Let us now proceed to test the credibility of Madame Despau, by other facts and circumstances presented by the record. She states that she and her sister Zulime went to New York, to obtain the record evidence of the former marriage of DeGrange; but that, on their arrival, they found that the records had been destroyed; and yet, there has been offered in evidence, on the part of the complainant, a certificate of the marriage of *Jacob* DeGrange with one *Barbara Orci*, signed by O'Brien, the very priest who solemnized the marriage, and dated *on the 11th of September*, 1806; and, from this certificate, it appears that the original record *was to be found at p. 45 of the Register*. Surely, if this be genuine, the records were *not* destroyed, when the witness and her sister sought for the desired record proof, *in* 1801—according to the position now assumed by the solicitors of the complainant—or, *in* 1803, according to the testimony of the witness herself. The complainant, therefore, has proved too much.

But, let us turn to the acts and declarations both of Clark and Zulime; and first, we will examine those of Zulime. While proceedings were pending in the Ecclesiastical Court, in this city, against DeGrange, for bigamy, he appeared, and took an affidavit as the wife of De-Grange; and, in this affidavit, declares that she did not believe that her husband was a bigamist. Strong objections have been urged against the record of these proceedings before the Ecclesiastical Court, as evidence. My own opinion clearly is, that it is evidence to prove *rem ipsam*—that such proceedings took place—and that Zulime, under whom the complainant also claims, appeared in Court, and took an affidavit as *the wife of De-Grange*, and that DeGrange himself was present in New Orleans. This is important as incontestible record evidence, showing strong grounds for the presumption that Zulime had not been previously married in Philadelphia to Daniel Clark. These proceedings before the Ecclesiastical tribunal took place several months *after* (as the complainant's solicitor contends) the marriage was celebrated. Madame Despau swears that DeGrange *had fled from the country, when Clark made proposals of marriage to Zulime;* and yet we find him here in New Orleans, appearing as defendant in these proceedings, in the month of September, 1802. He was also here when Clark was on his way to New York, on the 27th of June, 1802, as appears by a letter addressed by the latter to Chew & Relf, from Plaquemines. In reference to a debt due him from DeGrange, he says: "I wish you not to push Mr. D. for payment, but wait, consistent with safety, such time as he may find necessary. Should he be inclined to go away before the sum is paid, you must insist on security." By a letter addressed by DeGrange to Clark from Bordeaux, on the 24th of July, 1801, it is evident that the former was in France about the time his wife was in Philadelphia not, as I solemnly believe, from the evidence, for the purpose of procuring evidence of the former marriage of DeGrange, but of giving *birth to Caroline*, the fruit of her illicit connection with Daniel Clark. When we consider this letter of DeGrange—couched as it is in the most friendly language, and containing a warm recommendation of his wife to the kind consideration of Clark—in connection with the testimony of Coxe, detailing the circumstances of Zulime's introduction to him in Philadelphia, and the birth of Caroline, which shortly followed, I confess I find little indeed to justify the enthusiastic encomia so repeatedly bestowed by various witnesses on this record, on the character of Clark, as an honorable, high-minded man.

But there is another fact which conclusively shows that the testimony of Madame Despau, in relation to the marriage of Clark and Zulime, cannot be relied on. I allude now to the suit for alimony, which was instituted by Zulime against DeGrange *as her husband*, on the 30th of November, 1805—three years after it is alleged the marriage was solemnized. The solicitors for the complainant have strenuously resisted the introduction of the record of this suit, as evidence against the complainant. I am unable to appreciate the force of these objections. Nothing is more common in the courts of Louisiana, than the introduction of such evidence, to show the capacity in which a party has chosen to place himself before a court to assert a right. The general principle in the English law of evidence, that allegations in a bill of chancery are not evidence against the complainant in the bill in another suit, rests, I apprehend, upon the fact that the courts of chancery, in England, are not courts of record. Here, all our courts are courts of record, and it would be, in my judgment, a dangerous principle to introduce into our jurisprudence, that a party shall be permitted, in a solemn judicial proceeding, to assert a fact one day, and on another day be at liberty to deny it. I am clearly of opinion that the record in the suit for alimony, is good evidence to show that, on the 30th of November, 1805, Zulime DeGrange applied to the late county court of Orleans to award her a judgment for alimony against Jerome DeGrange, as her husband, and that judgment was given in her favor, on the 24th of December, 1805. It was only as the *wife of DeGrange*, that she had a right to ask for alimony at the hands of the court, and it would be most absurd to say that the eminent counsel who filed her petition, and prosecuted the suit to final judgment, would have acted without authority from the plaintiff in the cause.

The testimony of Madame Despau derives no strength or confirmation from that of her sister, Madame Caillavet. The statements of the two witnesses are, for the most part, consistent with each other, but totally inconsistent with those facts which are clearly ascertained, well established, and about which there can be no doubt on the mind of a Chancellor. It is only necessary to refer to a few facts stated by Madame Caillivet, to show how impossible it is, consistent with

truth, to give credit to her testimony. She states that "the preliminaries of the contemplated marriage (of Clark and Zulime) were settled by the husband of witness, at his house, in the year 1802 or 1803, in the presence of witness, *who went to France some time after the said arrangements, but previous to the said marriage alluded to.*" Witness has constantly resided in France since she went there, and she returned here within the last fifteen days. Now, the information of this witness, in reference to important facts connected with Clark's marriage, seems to have increased since she first gave this testimony. In her last deposition, she states *that she heard from Clark himself* that he was married to Zulime, and *that Myra was his only lawful child.* And yet, in the evidence first given, we are plainly told that she went to France after the arrangements for, *but previous to the marriage itself*, and that she *has constantly resided in France since she went there*, until she returned within the few days previous to giving her evidence. How she could have heard the declarations or statements alluded to from Clark, it is impossible to say, as she does not pretend that she ever met him in Europe. The solicitor for the complainant has explained this part of her evidence, by saying that she referred to her husband, who left for France after the preliminaries were arranged. The plain grammatical construction of the sentence does not justify this explanation; and it is somewhat remarkable that she did not make it herself, when, in a subsequent deposition, she complained that her testimony had not been properly taken down. Other corrections were made, but nothing is said in reference to this manifest and palpable contradiction.

"That which renders the testimony of a witness doubtful," says Gilbert, in his work on evidence, (p. 150,) "is the attestation of the several circumstances, and yet no proof of any one of those circumstances, to fall in with what he attests. This may render such a witness (standing alone, without any assistant proof,) to be very much suspected, and there must be great confidence in the integrity and veracity of the man, to believe many circumstances in one man's testimony, when, if it were true, there might be a multitude of concurrent proofs to strengthen and confirm the evidence."

"Another thing that may render a witness suspected," continues this author, "is in the person himself; as if he who were a party to the crime, swears for his own safety or indemnity; or be a relation or friend to the party." (Madame Caillavet, like Madame Despau, is an aunt of the complainant.)

It is necessary, says Domat, (b. 3, lit. VI. 553, No. 15,) to add to all these rules, in relation to proofs by witnesses, that we ought to consider their condition, their manners, their estate, their conduct, their integrity, their reputation; if their honor has received any blemish by a condemnation in a Court of Judicature; if they are in a condition to tell the truth *without regard to the persons interested*, or if it is to be feared that they are under some engagement, or have some inclination to favor one of the parties, *as if they are friends*, or enemies to one or other of them; if their poverty or wants expose them to the temptation of giving such testimony as may be agreeable to one of the parties, according as they have any thing to fear or hope for from him; if their testimony appears to be sincere without affectation; if the depositions be conformable to one another, and not concerted; if the number of the witnesses, the conformity of their depositions, common fame, and the probability of the circumstances confirm their evidence; if their variations, their disagreement, their contradictions render them suspected; if the consequence of the facts be such as may require a more exact consideration of what may render the witnesses suspected, as in criminal prosecutions; or if the facts be so slight that it is not necessary to be so exact in the inquiry, as if the matter were only a bare action of slander or defamation, in a quarrel between persons of a mean condition. Thus the right judgment that is to be made of the regard which ought to be had to the depositions of witnesses under all these views, depends on the rules which have been explained, and on the prudence of the Judges to make a right application of them, according to the quality of the facts and the circumstances.

The testimony of Bellechasse, so much relied on, is singularly inconsistent with the friendly relations which existed between himself and the defendant, Relf, for many years after the death of Clark. As late as 1822, he writes the most friendly letters to Relf, in which we find not the remotest allusion to the fraud, which, in his deposition taken in 1834, he alleges was committed by the latter, in suppressing the last will and testament of Clark. The solicitor of the complainant, who last addressed the Court, endeavored to explain this manifest inconsistency, by saying, that *immediately* after the death of Clark, Bellechasse could not have known of the commission of any fraud by Relf, and that the witness, in speaking of the suppression of the will, gave not his own, but the language of Pitot. A short extract from the testimony will show at a glance, the error into which the solicitor has fallen. "Pitot," says he, "as well as others, always spoke with the utmost indignation of the fraudulent suppression or destruction of the said last will of 1813, and the fraudulent substitution, in its place, of the provisional will of 1811, all of which, *we* attributed to *interested villainy.*" And yet we find that this devoted and confidential friend of Clark, who thus sympathized in the indignation expressed at the disappearance of the will, remaining on terms of cordial good will with the author of the "*villainy*" of which he complains, and resorting to no means, either by word or deed, to expose it, and thus vindicate the rights of the child of his deceased friend. He remains silent upon the subject until he is called upon to give evidence on behalf of the complainant, in 1834.

Equally inconsistent with his conduct, is the testimony of Samuel B. Davis. It is difficult to belive that this witness has disclosed all he knew in reference to whether the complainant was the legitimate or illegitimate child of Daniel Clark. From his peculiar position, as the immediate protector of the child during the life-time of the father, it is reasonable to presume, that he possessed advantages for acquiring information not enjoyed by the other witnesses in this record, and yet he states nothing definite. We infer from his evidence that his own belief was, that she was the legitimate child of Clark; and yet, we find him keeping her in utter ignorance of the circumstances of her birth and true parentage, and making no effort to assert her

[illegible] to a [illegible] [illegible] wedding [illegible] Myra [illegible] in the [illegible] to allowance [illegible] Clark. In [illegible] filed on [illegible], by Messrs. [illegible] it [illegible] *knowledged* [illegible]" In [illegible] declares that [illegible] made [illegible] his knowledge or consent. It is difficult to believe that the attorneys who [illegible] would have introduced such an [illegible] without authority. The testimony of [illegible] one of the attorneys, repels any such assumption. Both his testimony and that of [illegible] Davis shows clearly that the action was [illegible] after a consultation with Edward Livingston; and it is quite unreasonable, if not absolutely absurd, to suppose that that distinguished jurist would have [illegible] the institution of a suit, for alimony [illegible], in behalf of a *legitimate* child.

The testimony of [illegible] Bellechasse, and Mrs. Harper, [illegible] the [illegible], are good only to show that Clark [illegible] declared that Myra was [illegible] child. [illegible] boastful character of the man, as it is clearly portrayed in the record, [illegible] no doubt that he often [illegible] to a few friends. But we have the most convincing [illegible] that he made declarations to other friends [illegible] different construction. His [illegible] to his intimate and particular friend De la Croix [illegible] those made to Bellechasse, [illegible] Mrs. Harper. The letters of Coxe show, under his own hand, that so far from having been married [illegible], he was, as late as 1808, endeavoring to form a matrimonial alliance with Miss Caton, of Baltimore, a grand daughter of Charles Carroll. [illegible] it [illegible] believe [illegible] he would have contracted a marriage with that lady, if there was the [illegible] of his [illegible] to the world as a bigamist. [illegible] his letters [illegible] in England, and his [illegible] with Mr. Mastureau, [illegible] that he was a married man [illegible] and was regarded by him [illegible] of Zulime to [illegible] [illegible] In Philadelphia, [illegible] *not* [illegible] *pro* [illegible]. It is clearly [illegible] a few days after [illegible] married Des [illegible] Now [illegible] to suppose [illegible] Des [illegible] he would [illegible] mony or [illegible] have formed [illegible] with [illegible] that, [illegible] of the laws of Pennsylvania [illegible] of bigamy.

I [illegible] dispose of the case on the facts and [illegible] to the [illegible] some of the [illegible] law [illegible] [illegible] by [illegible].

[illegible] that [illegible] marriage [illegible] place at the time and [illegible] testimony of Madame Despau. It is admitted by the solicitors for the complainant, that it was a *clandestine marriage.* Madame Despau and Madame Caillavet speak of it as a secret marriage. They both testify that Clark never made it public, and that his refusal to do so "fretted and irritated the feelings of Zulime," and we are led by them to believe that this was the cause of her finally marrying Gardette. It is then well established by the evidence, that the marriage, if it ever took place, was clandestine in its origin, and was never promulgated during the lifetime of Clark. The married couple were never known as such in the society in which they lived. The residence of Clark was a place of frequent resort to a large circle of friends, and yet they never knew or recognised him as a married man. In the dwelling of the husband no female exercising the rights, and discharging the responsibilities of a wife, was seen or known. And in the hour of his final dissolution, around the couch of the dying man, where the *wife* would have been the first and last to be seen, no one filling her sacred office, or a moment appeared. And when the tomb had closed over his mortal remains, and his will had been admitted to probate, and the disposition of his property had become the subject of deliberation in the court having charge of his succession, no widow appeared to claim that portion which, by the benign [illegible] of the laws, then and now in force, was allotted to her as partner in the community of acquests and gains.

As a *clandestine marriage*, it is clear, that under the Spanish law, which prevailed at the [illegible] of the matrimonial contract, it had no civil effect—that is, no rights of property were created by it for the benefit of the issue of the marriage.

"We consider matrimony," says the 5 L. lit. 1, p. 4, "as a contract which is celebrated between those who have contracted espousals, (*los desposados*,) and from which it derives its force and efficacy; but authorized by the church, which gives it a worthy place among its sacraments, by reason of its dignity, mystical significations, and its ends." Again, L. 1, lit. 2, part 4, declares that "marriage is the conjunction of man and woman, made with the intention of living always together, and not to separate, observing chastity one to the other, and not cohabiting with any other man or woman; living both together."

[illegible] definition are founded certain principles [illegible] others is the fourth, which is, *that it be not [illegible] clandestinely.* From the fourth principle we deduce—1st. That secret marriages are forbidden, for the just reasons set forth in Ll. 1 and 5, lib. 3, p. 4, as are also those which are celebrated without witnesses; without the permission of the father, mother, or relations to whose charge the woman betrothed is committed, or without giving notice of it in the parish church of which the contracting parties are parishioners, according to L. 1, lit. 3, p. 4. 2dly. That besides [illegible] cal penalties, *those who marry [illegible]ly* will also be liable to civil ones; and [illegible] their children will be illegitimate, but thus incur the penalty of confiscation of property, banishment, and [illegible] of being disinherited, according to L. 1, [illegible] lib. 5 of the Nova. Recopilacion, which explains what is expressed in Ll. 1, 2, 5 and 6, lit. 1, lib. 3, of the Fuero real, which treat of disinheritance in these cases. 1 White's New Recopilacion, 41, 42, 43 and [illegible]

Martienzo *de Matrimonio*, lib. 5, lit. 1, l. 1, Glosa, 7, declares, that clandestine marriages are invalid, and the offspring illegitimate, although the parties are in good faith, if there exists a legal impediment to marriage between them.

Ferraris, under the head of Impedimenta Matrimonii says: "Those who otherwise than in the presence of the parish priest, or some other official of the priest himself, or by license of the ordinary or two or three witnesses, take it upon themselves to contract a marriage, such the sacred synod rendered wholly incapable of contracting thus, and decreed contracts of this kind null and of no effect. 5 Ferraris Bibliotica, 64. Tit. Impedimenta Matrimonii, No. 11. See also 1 Frebrero p. 17.

Under the laws of Spain there were different kinds or classes of illegitimate children, that is to say, children who labored under certain civil disabilities, and they might be such, although born in wedlock. Such were children who were the fruit of clandestine marriages. They could not inherit. And the policy of the law is perfectly apparent. It was to prevent those inconveniences which must necessarily exist in all countries where the law of community of acquests and gains prevails, if parties are permitted to contract a matrimonial alliance, and never make it known to the world. Property may be acquired and sold during the lifetime of the husband without any relinquishment on the part of the wife of her legal rights. The husband dies, and the wife immediately comes forward to assert her claim to her share of the community in the property, thus without authority disposed of by the husband.

The same principles of law in reference to clandestine marriages, seem to have prevailed in France as well as in Spain. They seem to have been common to countries under the influence of the Catholic religion, and where the law of community was recognized. They constituted what was sometime called in those countries, *le droit commun*—the common law of the land.

Pothier, with his usual clearness, has in his *Traite du Contract de Marriage*, (p. 400, art. 111,) given as the rule of law. It will be found in the chapter which treats *of certain marriages which, though duly contracted, have no civil effects.*

The decretal order of Louis XIII. in the year 1639, deprives of civil effects such marria[ges] as have designedly been kept secret till the dece[ase of] one of the married couple.

It is said, art. 5: "It is hereby decla[red that] the children who shall be born of such marria[ges] as have hitherto been kept secret by the parties, or shall be kept secret by them till their death, and as manifest, rather the shame arising from concubinage than the dignity of a marriage, are incapable of all inheritances whatsoever, and likewise their posterity."

When such marriages have been solemnized in the church, at the request of the parties, in presence of [the] subscribing witnesses, and, have no other vice than this clandestineness, they are duly contracted; they subsist as to the natural bond; but the decretal order [o]f Louis XIII, which we have just cited, deprives them of civil effects, by declaring that the children born therefrom are incapable of any inheritance whatever.

The question has been raised, whether such children were, by this article, incapable not only of inheriting from their father and mother, but also from their collateral relations: the decree of the 24th July, 1704, settles the point that they were. The question should cause no difficulty.

1st. The words *all inheritances* (*toutes successions*) comprise collateral as well as direct inheritances.

2d. When the law declares such children incapable of inheriting, it does so only because it refuses civil effects to the marriage from which they are sprung, and consequently refuses to the children the rights of civil parentage. Wherefore, not having these rights, they cannot be capable of any inheritance.

Their posterity are also declared incapable of inheriting; for such children cannot transmit to their posterity the rights of civil parentage which they themselves have not.

It is incumbent on those who attack such marriages, to prove the clandestineness. Various circumstances may prove it.

1st. When *the wife has not taken the name of her husband during all the time of the duration of the marriage.* 2d. When, in acts passed by her, since her marriage, she has assumed to act as a maiden, or as the widow of a previous husband. 3d. When a servant-woman who has married her master, or a man who has married his mistress, have always continued to appear in the house in their servile capacity.

If a marriage, kept secret during the entire lifetime of one of the couple, and which, in the language of the edict, manifests rather the shame arising from concubinage than the dignity of a marriage, it is punished with the privation of civil effects, even in children born thereof, although they be guiltless of the fault which their parents, by concealing the marriage, have committed; for a still stronger reason, should it be deprived of civil effects as regards the widow who has aided in keeping it secret.

This has been settled by a decree of the 26th May, 1705, cited by Augeard, in which Marie Sonnelle, a seamstress of the palace, widow of the Sieur Sonnet, treasurer of the Swiss, whose marriage had been concealed all along from the first celebration, was declared to be deprived of the civil effects of her marriage, and consequently of her dowry and other marriage con[ven]tions; [the]re to her the s[aid] heirs were merely conde[mn]ed to [re]acknowledged, in his c[ase, wh]ich her deceased partner received from her as her dower [or] [g]ift of marriage to h[a]ve ed, in this respect, against the hu[sband] the widow maintain[ed] tion which, in law, is called *condicti[o ...]*'s heirs, the action [...] *ne causa.*

The law doe[s] not attach so much imp[ortance to the] clandestine solemnization of the marriage [as to the] keeping of that marriage secret, after it has [been] contracted. It is true, the catholic church [requires] certain forms to be observed, and a certain degree of publicity to be given; but we may assume, as a sound rule, that the community at large has no great interest in the mere mode of [cele]brating a matrimonial alliance; but it has a deep ab[iding] interest in having that marriage made known. It has a right to know whether a man be a married man or not; and this must ever be in a country such as Louisiana was, and is, a subject of public concern. The character of our peculiar system of jurisprudence renders it so; and it is therefore absurd to appeal to English law as a guide in settling questions of this nature.